Exhibit : 2671

BEFORE THE SPECIAL COURT, DESIGNATED FOR CONDUCTING THE SPEEDY TRIAL OF RIOT CASES, SITUATED AT OLD HIGH COURT BUILDING, NAVRANGPURA, AHMEDABAD.

SESSIONS CASE NO.235 OF 2009
CONNECTED WITH
SESSIONS CASE NO.236 OF 2009
AND
SESSIONS CASE NO.241 OF 2009
AND
SESSIONS CASE NO.242 OF 2009
AND
SESSIONS CASE NO.243 OF 2009
AND
SESSIONS CASE NO.245 OF 2009
AND
SESSIONS CASE NO.246 OF 2009
AND
SESSIONS CASE NO.270 OF 2009

Sessions Case No.235 of 2009

Complainant : The State of Gujarat.

Versus

Accused No.1: Naresh Agarsinh Chhara,
also known as brother of Guddu Chhara @ Nariyo (Arrested on 08/03/2002 and released

on bail on 20/12/2002)

Accused No.2 : Morlibhai Naranbhai Sindhi @ Murli,
(Arrested on 08/03/2002 and released on bail on 12/09/2002)

Accused No.3 : Umeshbhai Surabhai Bharwad,
(Arrested on 08/03/2002 and released on bail on 26/12/2002)

Accused No.4 : Ganpat Chhanaji Didawala (Chhara)
(Arrested on 14/04/2002 and released on bail on 30/10/2002)

Accused No.5 : Vikrambhai Maneklal Rathod (Chhara) @ Tiniyo, Son-in-law of deceased Dalpat
(Arrested on 14/04/2002 and released on bail on 08/10/2002).

Accused No.6 : Rajesh @ Panglo Son of Kantilal Parmar (Chhara)
(Arrested on 14/04/2002 and released on bail on 03/10/2002).

Accused No.7 : Champak Himmatlal Rathod (Chhara),
(Arrested on 14/04/2002 and released on bail on 08/10/2002).

Accused No.8 : Ravindra @ Batakiyo Kantilal Parmar
(Arrested on 14/04/2002 and released on bail on 03/10/2002). At present in Jail from 20/09/2009.

Accused No.9 : Amrat @ Kalu Babubhai Rathod (Chhara)
(Arrested on 14/04/2002 and released on bail on 11/10/2002).

Accused No.10: Haresh @ Hariyo Son of Jivanlal @ Agarsing Rathod (Chhara) also Known as brother of Guddu
(Arrested on 14/04/2002 and released on bail on 19/10/2002).

Accused No.11: Kaptansing Javansing Parmar (Chhara)
(Arrested on 14/04/2002 and released on bail on 11/10/2002). At present in Jail from 01/06/2011.

Accused No.12: Fulsing Chandansing Jadeja (Chhara)
(Arrested on 14/04/2002 and released on bail on 08/10/2002)

Accused No.13: Deepak Kantilal Rathod (Chhara)
(Arrested on 14/04/2002 and released on bail on 11/10/2002).

Accused No.14: Mahesh Veniram Rathod (Chhara)
(Arrested on 14/04/2002 and released on bail on 03/10/2002).

Accused No.15: Yogesh @ Munno Son of Narayanrav Tikaje (Marathi)
(Arrested on 14/04/2002 and released on bail on 11/10/2002). At present in Jail from 17/08/2009.

Accused No.16: Dhanraj Vaghumal Sindhi
(Arrested on 14/04/2002 and released on bail on 27/12/2002).

Accused No.17: Nandlal @ Jeki Son of Vishnubhai Chhara
(Arrested on 14/04/2002 and released on bail on 05/12/2002).

(Accused No.1 to 17 are as per the charge, Exh.65.)

Note :- Criminal Case No.982/2002 was filed; accused named above were charge-sheeted on 03/06/2002; Since the offences were triable by Sessions Court, the case was committed to Sessions Court on 29/07/2009 by Learned Metropolitan Magistrate Court No.11.

Sessions Case No.236 of 2009

Complainant : The State of Gujarat.

Versus

Accused No. 18 : Babubhai @ Babu Bajrangi Son of Rajabhai Patel,
(Arrested on 28/05/2002 and released on bail on 19/10/2002)

Accused No. 19 : Padmendrasinh Jashwantsinh Rajput
(Arrested on 28/05/2002 and released on bail on 19/10/2002)

Accused No. 20 : Kishan Khubchand Korani
(Arrested on 28/05/2002 and released on bail on 21/12/2002)

Accused No. 21 : Prakash Sureshbhai Rathod (Chhara)
(Arrested on 28/05/2002 and released on bail on 11/10/2002)

Accused No. 22 : Suresh @ Richard @ Suresh Langado Son of Kantibhai Didawala (Chhara)
(Arrested on 29/05/2002 and released on bail on 23/10/2002)

Accused No. 23 : Ashok Silvant Parmar (Chhara)
(Arrested on 04/06/2002 and released on bail on 03/10/2002)

Accused No. 24 : Rajkumar @ Raju Son of Gopiram Chaumal
(Arrested on 07/06/2002 and released on bail on 19/10/2002)

Accused No. 25 : Premchand @ Tiwari Conductor Son of Yagnanarayan Tiwari
(Arrested on 19/06/2002 and released on bail on 08/05/2003)

Accused No. 26 : Suresh @ Sehjad Dalubhai Netlekar (Marathi Chharo)
(Arrested on 22/06/2002 and released on bail on 14/10/2002).

Accused No. 27 : Navab @ Kalu Bhaiyo Harisinh Rathod
(Arrested on 22/06/2002 and released on bail on 04/07/2003)

Accused No. 28 : Manubhai Keshabhai Maruda

(Arrested on 26/06/2002 and released on bail on 11/10/2002)

Accused No. 29 : Prabhashankar @ Prabha Pandit Shivshankar Mishra,
(Arrested on 28/06/2002 and released on bail on 11/10/2002)

Accused No. 30 : Shashikant @ Tiniyo Marathi Son of Yuvraj Patil
(Arrested on 28/06/2002 and released on bail on 04/07/2003) At present, in Jail from 19/08/2005)

(Accused No.18 to 30 are as per the charge, Exhibit 65.)

Note :- The Criminal Case No.1662/02 was filed; accused named above were charge-sheeted on 22/08/2002; Since the offences were triable by Sessions Court, the case was committed to Sessions Court on 29/07/2009 by Learned Metropolitan Magistrate Court No.11.

Sessions Case No.241 of 2009

Complainant : The State of Gujarat.

Versus

Accused No.31 : Ankur @ Chintu Son of Ashokbhai Parmar
(Arrested on 07/01/2009 and released on bail on 20/04/2009)

Accused No.32 : Shivdayal @ Raj Hakamsingh Rathod
(Arrested on 04/02/2009 and released on bail on 19/03/2009)

(Accused No.31 and 32 are as per the charge, Exhibit 65.)

Note :- The Criminal Case No.87/09 was filed; accused named above were charge-sheeted on 02/04/2009; Since the offences were triable by Sessions Court, the case was committed to Sessions Court on 30/07/2009 by Learned Metropolitan Magistrate Court No.11.

Sessions Case No.242 of 2009

Complainant : The State of Gujarat.

Versus

Accused No.33 : Babubhai @ Babu Vanzara Son of Jethabhai Salat (Marvadi)
(Arrested on 19/11/2007 and at present in Jail)

(Accused No.33 is as per the charge, Exhibit 65.)

Note :- The Criminal Case No.71/08 was filed; accused named above was charge-sheeted on 15/02/2008; Since the offences were triable by Sessions Court, the case was committed to Sessions Court on 30/07/2009 by Learned Metropolitan Magistrate Court No.11.

Sessions Case No.243 of 2009

Complainant : The State of Gujarat.

Versus

Accused No.34 : Laxmanbhai @ Lakho Son of Budhaji Thakor
(Arrested on 16/03/2009 and released on bail on 22/06/2009)

Accused No.35 : Vijay @ Munno Shetty Son of Kesharising Didawala (Chhara)
(Arrested on 19/03/2009 and released on bail on 25/06/2009, but he expired during the trial on 27/10/2010. The death certificate of this accused is produced vide Exh.1297. Abated vide order below Exh.1296 dated 03/12/2010)

Accused No.36 : Janaksinh Dharamsinh Nehra @ Janak Marathi
(Arrested on 27/03/2009 and at present in Jail)

Accused No.37 : Dr.Mayaben Surendrabhai Kodnani,
(Arrested on 04/04/2009 and released on bail on 19/05/2009)

(Accused No.34 to 37 are as per the charge, Exhibit 65.)

Note :- The Criminal Case No.123/09 was filed; accused named above were charge-sheeted on 01/05/2009; Since the offences were triable by Sessions Court, the case was committed to Sessions Court on 30/07/2009 by Learned Metropolitan Magistrate Court No.11.

Sessions Case No.245 of 2009

Complainant : The State of Gujarat.

Versus

Accused No.38 : Ashok Hundaldas Sindhi
(Arrested on 26/09/2002 and released on bail on 19/10/2002)

Accused No.39 : Harshad @ Mungda Jilagovind Chhara Parmar
(Arrested on 19/06/2003 and released on bail on 10/07/2003)

Accused No.40 : Mukesh @ Vakil Ratilal Rathod,
Son of Jaybhavani.
(Arrested on 07/07/2003 and released on anticipatory bail on the same day)

Accused No.41 : Manojbhai @ Manoj Sindhi Son of Renumal Kukrani,
Known as Manoj Videowala and Manoj Tyrewala
(Arrested on 20/08/2004 and released on bail on 24/04/2006)

Accused No.42 : Hiraji @ Hiro Marvadi @ Sonaji Son of Danaji Meghval (Marvadi)
(Arrested on 27/08/2004 and released on bail on 29/03/2006)

Accused No. 43 : Haresh Parshuram Rohera,
(Arrested on 20/08/2004 and released on bail on 10/05/2005)

Accused No. 44 : Bipinbhai @ Bipin Autowala Son of Umedrai Panchal
(Arrested on 26/09/2004 and released on bail on 02/12/2005)

(Accused No.38 to 44 are as per the charge, Exhibit 65.)

Note :- The Criminal Case No.1924/02 was filed; accused named above were charge-sheeted on 10/11/2004; Since the offences were triable by Sessions Court, the case was committed to Sessions Court on 30/07/2009 by Learned Metropolitan Magistrate Court No.11.

Sessions Case No.246 of 2009

Complainant : The State of Gujarat.

Versus

Accused No. 45 : Ashokbhai Uttamchand Korani (Sindhi) Known as Ashok Pan-na Galla Walo and Bholenath Pan-na-Galla walo Ashok Sindhi (Arrested on 16/09/2008 and released on bail on 09/01/2009)

Accused No. 46 : Vijaykumar Takhubhai Parmar (Arrested on 16/09/2008 and released on bail on 05/01/2009)

Accused No. 47 : Ramesh Keshavlal Didawala (Chhara) (Arrested on 16/09/2008 and released on bail on 05/01/2009)

Accused No. 48 : Kishanbhai Shankarbhai Mahadik, Known as Kishan Manek and Kishan Dada Marathi (Arrested on 16/09/2008 and released on bail on 28/01/2009)

Accused No. 49 : Ranchhodbhai Manilal Parmar, (Arrested on 04/11/2008 and at present in Jail)

Accused No. 50 : Badal Ambalal Parmar (Chhara), (Arrested on 04/11/2008 and released on bail on 10/02/2009)

Accused No. 51 : Navin Chhaganbhai Bhogekar(Chhara) (Arrested on 04/11/2008 and released on bail on 28/01/2009)

Accused No. 52 : Sachin Nagindas Modi, (Arrested on 04/11/2008 and released on bail in this case on 20/02/2009).

Accused No. 53 : Vilas @ Viliyo Prakashbhai Sonar (Arrested on 10/11/2008 and released on bail on 31/12/2008)

Accused No. 54 : Nilam Manohar Chaubal (Marathi) (Arrested on 11/11/2008 and released on bail on 30/12/2008)

Accused No. 55 : Dinesh @ Tiniyo Govindbhai Barge (Marathi) and known as Son of SRP Wala

Govind
(Arrested on 12/11/2008 and released on bail on 19/02/2009) At present in Jail from 02/02/2010)

Accused No. 56 : Geetaben, daughter of Ratilal @ Jaybhavani Rathod,
Known as younger daughter of Jaybhavani
(Arrested on 12/11/2008 and released on bail on 29/12/2008).

Accused No. 57 : Pankajkumar Mohanlal Shah
(Arrested on 17/11/2008 and at present in Jail).

Accused No. 58 : Santoshkumar Kodumal Mulchandani,
Known as Santosh Dudhwala
(Arrested on 17/11/2008 and released on bail on 29/12/2008).

Accused No. 59 : Subhashchandra @ Darji Son of Jagganath Darji, known as Maharashtrian Darji,
(Arrested on 24/11/2008 and at present in Jail).

(Accused No.45 to 59 are as per the charge, Exh.65.)

Note :- The Criminal Case No.295/08 was filed; accused named above were charge-sheeted on 12/12/2008; Since the offences were triable by Sessions Court, the case was committed to Sessions Court on 31/07/2009 by Learned Metropolitan Magistrate Court No.11.

Sessions Case No.270 of 2009

Complainant : The State of Gujarat.

Versus

Accused No. 60 : Pintu Dalpatbhai Jadeja (Chhara) (Arrested on 17/07/2009 and at present in Jail.)

Accused No. 61 : Ramilaben daughter of Ratilal @ Jaybhavani Somabhai Rathod, Known as elder daughter of Jaybhavani (Arrested on 18/07/2009 and released on bail on 26/08/2009).

Accused No. 62 : Kirpalsing Jangbahadursing Chhabda, Known as P.A. of Mayaben Kodnani, (Arrested on 19/07/2009 and till today in Jail).

(Accused No.60 to 62 are as per the charge, Exhibit 65.)

Note :- The Criminal Case No.239/09 was filed; accused named above were charge-sheeted on 13/08/2009; Since the offences were triable by Sessions Court, the case was committed to Sessions Court on 25/08/2009 by Learned Metropolitan Magistrate Court No.11.

The names of the deceased accused are as under:

(1) Gulab Kalubhai Vanzara
(2) Deepak Laljibhai Koli
(3) Ramesh @ Subhash Ramkrushna Tukaram Arwade (Marathi)
(4) Maheshbhai Bhikhabhai Solanki
(5) Dalpat Abhesinh Jadeja (Chhara)
(6) Jaswant @ Lalo Keshavlal Rathod (Chhara)
(7) Raju Ratilal Rajput (Chhara)
(8) Rajendra Kesharsinh Bhat (Chhara)
(9) Ratilal @ Jaybhavani Somabhai Rathod
(10) Mukesh @ Guddu Chhara Jivanlal Baniya (Chhara)

(The above named Accused are as per the charge, Exhibit 65.)

The names of the absconding accused are as under:

(1) Vinod Vasantrai Marathi
(2) Mohansingh Brijlal Nepali
(3) Tejasbhai @ Tejpal Ratilal Pathak

(The above named Accused are as per the charge, Exhibit 65.)

Mobs of thousands of unidentified persons.

(As per the charge at Exhibit 65).

Appearances of the Learned advocates as on date :

(A) Learned Special P.P. Mr.A.P.Desai for the State.
Learned Sp. Asst. P.P.Ms.H.D.Rajput for the State.
Learned Sp. Asst. P.P.Mr.G.A.Vyas for the State.

(B) Learned advocate Mr.Y.B.Shaikh, Mr.R.A.Shaikh, Mr.Altaf Zinderan and Mr.G.M.Parmar for the victims.

(C) Learned advocate Mr.G.S.Solanki for the accused Nos.1, 8, 15, 28, 30, 46, 48, 53, 54, 55, 59 and 62.

(D) Learned advocate Mr.N.M.Kikani for the accused Nos. 2, 5, 6, 7, 9, 11, 13, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, 37, 38, 41, 43, 44 and 58.

(E) Learned advocate Mr.K.N.Thakur for the accused Nos.3, 4, 10, 12, 33, 49, 57 and 60.

(F) Learned advocate Mr. H.S.Ravat for the accused Nos.32, and 61.

(G) Learned advocate Mr.H.S.Ravat for the accused Nos.21, 31, 33, 39, 40, 42, 45, 47, 50, 51, 52 and 56 (by virtue of transfer purshis).

(H) Learned advocate Mr.R.N.Kikani for the accused Nos.34, 35 and 36.

[CORAM : H.H. DR. SMT. JYOTSNA YAGNIK]

Designated Judge,
For Conducting Speedy Trial Of Riot Cases,
Situated At SIT Courts,
Old High Court Building,
Navrangpura, Ahmedabad.

Date of Judgement : 29th August, 2012.

COMMON JUDGEMENT

A. Brief Facts and history about the case :

The group of eight Session Cases popularly known as 'Naroda Patiya Case', is turned out of the occurrence of killing of Kar Sevaks at Godhra in Sabarmati Express on 27/02/2002, while the train coming from Ayodhya halted at Godhra.

(1) As is known, the Godhra Train Carnage triggered wide spread, large scaled communal riots in Gujarat, but, the stampede at Naroda Patiya took the highest death toll, which was of about 96 human lives, including missing of many persons. In addition to many other offences against human body, property, relating to religion etc. in which 96 persons were done to death and 125 were injured, even property of crores of rupees was also damaged, destroyed and ransacked at Naroda Patiya.

(2) All these victims are of Muslim community, mainly hailed

from Gulmarg-Kerala, Maharashtra, and some of them from Rajasthan and Uttar Pradesh. Most of them are too poor, struggling for bread for their families and are labourer, who were not even able to speak the regional language and did not understand Gujarati language thoroughly.

(3) The complaints related to Naroda Patiya massacre started to have been filed at Naroda Police Station right from 28/02/2002 night itself. About 26 different complaints came to be filed, in addition to the filing of the complaint vide I-C.R.No. 100/02 which was filed by the P.S.I., then Shri Solanki (now he has changed his surname to Delvadiya) of Naroda Police Station. Different complaints came to be filed, which were then merged into some of these complaints. Vide Exh. 2004 dated 29/04/2002, I-C.R.No.238/02 and vide Exh.2128 dated 01/05/2002, remaining 25 complaints were ordered to be merged as the Police Commissioner of City of Ahmedabad has passed necessary orders to merge all these 26 main complaints wherein about 120 complaints were merged, which all merged into I-C.R.No.100/02.

Thus, in all about **120** complaints were merged into these 26 complaints, which were again merged into I-C.R.No.100/02. All these group of complaints viz. 120 complaints have been treated as part of the complaint filed at Naroda Police Station I-C.R.No.100/02.

(3-A) The gist of different complaints and different testimonies wherein, different occurrences took place throughout the day of 28/02/2002 is as under :

“That the occurrence took place on 28/02/2002, near Nurani Masjid and at the Muslim chawls opposite Nurani Masjid, the entry of which, is facing long S.T. Workshop wall, that the call for the Bandh (voluntary curfew) was given by Vishwa Hindu Parishad and the riotous mobs were of the volunteers of Vishwa Hindu Parishad, R.S.S., Bajrang Dal lead by leaders of B.J.P. etc.

That somewhere in between about 9:30 a.m. and 11:00 a.m. and thereafter, the riotous mob with deadly weapons, of thousand of Hindus came from all different sides who were making uproar, clamour was all around, the disturbances started severely after 10:00 a.m. onwards when the Hindu mobs unduly entered in Muslim chawls and thrust into the Muslim houses, the infuriated mobs started doing massive onslaught by burning dwelling houses and created violent disorder all around. The entire day was the day of horrendous carnage, stone-pelting on Muslims was common, stone-pelting on Nurani Masjid was done, there was gas cylinder blast at the Masjid, everyone in the mob was with some or other deadly weapon, including gupti, trident, scythe, spear, sword etc., Kerosene, petrol and even burning rags were also thrown, they set on fire Muslim houses in the Muslim Chawls, killed and burnt Muslims, slogan shouting was also all around wherein they were mainly shouting 'slaughter, Cut, not a single Miya should be able to survive, Jay Shri Ram' etc.

They were shattering the property of Muslims into pieces; they were ransacking the property of Muslims by unduly getting into the dwelling houses of Muslims; they were outraging the modesty of Muslim women; they were torching

even women, children and crippled by burning them alive. The men of the mob wore Khaki half and saffron headband.

What has been unfolded is, the police was not active in protecting the Muslims. Different chawls in the area are mainly known as Hussain Nagar or Hussain Nagar-Ni-Chawl. All Chawls, situated in the beginning of the road opposite Nurani Masjid and thereafter, are popularly known as Hussain Nagar and after those chawls, Jawan Nagar comes. Adjoining to Jawan Nagar, there is Gangotri Society besides which there is Gopinath Park. The Gokul Society was then under construction, the khaada (pitfall) of Jawan Nagar was near Jawan Nagar, Jawan Nagar did not have any direct access from the Highway because of a wall partitioning Jawan Nagar Khaada and Jawan Nagar.

The damaging and destroying was also done in the houses of Muslims and in Nurani by bursting gas cylinder and by throwing inflammable substances. Police did laathi-charge and firing wherein many Muslims were killed. The private firing by the accused is also alleged. The S.R.P. Quarters was adjoining to Jawan Nagar, but in the S.R.P. Quarters, the Muslims were not allowed to get in or enter inside. Hence, many were beaten while attempting to enter the S.R.P. Quarters. However, some of the Muslims could secure their shelter at S.R.P. which might be in the morning itself and thereafter it was prohibited.

The violent mobs were marching inside the Muslim chawls. They were burning Muslims alive and torching the Muslim dwelling houses, unforgettable damage was caused to the Muslims, the atmosphere was surchilled with fear, anxiety

and tension and understanding the tribulation on the frontal side the Muslims could not go towards Nurani Masjid since police was firing and bursting tear gas shells from that side. Even violent mobs with deadly weapons in the hands of each of the members, were there. Police was doing laathi charge and asking Muslims to go inside the house, which houses became very insecure, unsafe and sure to die site, hence the Muslims were not inclined to go inside.

Having no option the Muslims then went on the backside of the Muslim Chawls which was towards Hindu societies. Some of them went to Jawan Nagar Pit fall, some of them went firstly to Hussain Nagar and then to Jawan Nagar. Then, upon increase of tension and further marching and attacking of the mobs, they continued stepping back and back and some took refuge at the terraces of closed bungalows in Hindu society i.e. Gangotri Society.

In nutshell, every Muslim was running here and there in search of a shelter for that entire day and ultimately, at night they were taken to the relief camp under police protection where, they had to stay for months together. Most of them, then after, could not return to their houses at Naroda Patiya, but, have rather shifted to the houses given by Islamic Relief Committee.”

(4) The National Human Rights Commission has filed Writ Petition before the Hon'ble Supreme Court of India against the State of Gujarat and others, which came to be decided on 01/05/2009 by the Hon'ble Supreme Court of India (Coram: Hon'ble Dr.Justice Arijit Pasayat, Mr.Justice P. Sathasivam and

Mr. Justice Aftab Alam).

The Special Investigating Team (hereinafter referred to as S.I.T.) came to be constituted by the directions given by Hon'ble Apex Court, for speedy trial of riot cases including the case on hand.

(5) By virtue of the notification dated 01/04/2008 of Government of Gujarat which is on record vide Exh.2332, the S.I.T. came to be constituted.

(6) The investigation which began from P.I. Shri K.K. Mysorewala of Naroda Police Station, then passed on to A.C.P., Shri P.N.Barot which then passed on to Crime Branch, D.C.B. Police Station, Ahmedabad and was handed over to SIT on 10/04/2008.

As has been mentioned at paragraph (8) hereinbelow, different F.I.R.s came to be filed. As the charge-sheets were filed, the criminal cases were lodged in the Court of Learned Metropolitan Magistrate, Court No.11, which were committed to the Sessions Court on the dates mentioned hereinabove.

(7) All the eight Sessions Cases were tried by this Court. Vide the Order passed below application Exh.22, all the eight sessions cases were consolidated to frame joint charge and to have a joint trial of all the cases. All the evidence has been recorded in common for all the eight cases, forming part of record of Sessions Case No.235/2009 being main case. By virtue of the said order, all the said eight Sessions Cases have been tried jointly as one case and that all the accused have

therefore, been shown as continuous accused without changing their numbers, upon change of the Sessions Cases.

B. List Of Complaints :

(8) Following complaints have been registered, all of which have been merged in I-C.R.No.100/02.

Sr. No.	**I-C.R.No.**	**Exhibit of summary papers of complaints**	**Exhibit of F.I.R.**
1	111/02	1776/1	293
2	115/02 **		294
3	117/02	1776/2	295
4	127/02	1776/3	296
5	129/02 **	In the deposition, complaint is at Exh.291	297
6	130/02	1776/4 (alongwith eight statements)	298
7	153/02 **	In the deposition, complaint is at Exh.323.	299
8	161/02	1776/5 (alongwith three statements)	300
9	162/02	1776/6	301
10	163/02	1776/7	302
11	164/02	1776/8	303
12	176/02	1776/9 (other 49 complaints. One complaint of Bilkishbanu has not been accumulated in F.I.R.)	304
60	177/02	1776/10 (including other 28 complaints)	2363
88	179/02	1776/11	305
89	180/02	1776/12	306
90	181/02	1776/13	307

91	182/02	1776/14	308
92	183/02	1776/15	309
93	184/02	1776/16	310
94	185/02	1776/17	311
95	187/02	1776/18 (including 8 other complaints)	312
104	188/02	1776/19 (including 12 other complaints)	313
117	204/02	1776/20	314
118	208/02	1776/21	315
119	210/02	1776/22	316
120	238/02	1776/23	317
	267/02	1776/24 (not part of I-CR No.100/02	318

** In all three cases, as has been declared in the pursis, Exh.1776 by PW- 263, the production witness, the summary papers including the complaint and accompanied materials have not been found in the Court of Learned Metropolitan Magistrate Court No.11.

All the above 120 complaints have then merged into I-C.R. No.100/02 of Naroda Police Station.

C. Translated Version of I-C.R.No.100-2002 :

(9) The translated version of I-C.R.No.100/02 which is on record in regional language at Exh.1773 filed by PW- 262, Mr. V.K.Solanki is as below.

Date : 28/02/2002

“I, V.K. Solanki, P.S.I., Naroda Police Station, Ahmedabad City, do complain in person that :

That recently when the Karsevaks, who had gone with respect to the issue relating to construction of Ram Temple at

Ayodhya, U.P. were while returning by train, which had started from Godhra Railway Station, was stopped by a mob of Muslim community and brought down the driver and then assaulted the Karsevaks and other passengers, who were sitting in the railway compartments, with deadly weapons and breaking the compartments, set fire to the compartments. Due to this, some women, men and children had died, pursuant to which Vishwa Hindu Parishad had given a call of “Gujarat Bandh” today.

Today on 28/02/2002 at 7.00 a.m., police points were fixed in Police Station area. You and Second P.I. Shri V.S. Gohil and myself in our respective vehicles, had gone for patrolling in Police Station area. Along with me, there were ASI Dashrathsinh Udesinh, Police Constable Ashoksinh Lakshmansinh, Police Constable Bharatsinh and Police Constable Deepakkumar Govindram etc., in the requisite vehicle. During the call for “Bandh”, the situation was found to be tense in the city area. Therefore, myself, you, Second P.I. and other requisitioned vehicles had continued patrolling. Between 11.00 and 11.30 a.m., mobs of people had started coming up at several places in Police Station area, which were attempted to be dispersed during the course of patrolling. But, by passage of time, violent incidents of setting ablaze the shops, dwelling houses, carts, etc. had started. At that time, police persons posted at the point of S.T. Patia, Opposite Nurani Masjid in Police Station area namely ASI Ramabhai Parshottambhai, ASI V.T. Ahari, Police Constable Pradeepsinh Ratansinh, Police Constable Chandrawadan Ramjibhai and Kirankumar Parshottambhai as well as the police personnels posted at the point of S.T. Workshop namely, ASI Ajitsinh Jashwantsinh, Police Constable Vinubhai Harjivandas and

Police Constable Jitendradan, were present at the respective points. A mob of around 15,000 to 17,000 people had gathered at the entrance of Hussain's Chali, near S.T. Workshop, opposite Nurani Masjid, S.T. Patia. At that time, you, Deputy Police Commissioner, Zone IV and Assistant Police Commissioner, G Division had also arrived and about 22 tear gas Shells were deployed by Chhababhai of your vehicle, but the mob had become uncontrollable and the members of the mob were shouting “attack – kill”. At that time, mobs of people from Krishna Nagar Cross Roads, Saijpur Fadeli Tower, Kuber Nagar, Bungalow Area and Chhara Nagar had come. The leaders of such mobs were the active members of VHP & BJP namely, Kishan Korani, P.J.Rajput, Harish Rohera, Babu Bajrangi and Raju Chobal, who were shouting “attack – kill” and they were instigating members of the mobs. It was found that it was impossible to control the mobs, hence, the mobs were warned to disperse and if they do not disperse, firing would be done. In spite of such repeated warnings, the members of mobs, becoming uncontrollable, started to break shops and houses of the members of Muslim community residing near Nurani Masjid and its vicinity. Thereupon, I had fired five rounds from my Service Revolver and two rounds from Musket – 410, at the instructions of the Deputy Police Commissioner and you had also fired eight rounds one after the other and other police personnels and officers had also fired bullets and shells. But, there was no effect on the members of mobs and by becoming more violent, the members of the mobs divided themselves into small groups and started breaking Nurani Masjid and set it to fire. They also broke shops and houses of Muslim people situated in the nearby area and looted goods lying in the shops and committed act of arson. On the

other hand, mobs of Muslim people and mobs of Hindu people came in front of each other at Hussain's Chawl, near S.T. Workshop and started fighting against each other by using iron pipes and sticks and it has come to my knowledge that due to the act of arson, in all 58 persons including men, women and children were killed.

At the time of the said riots, as per the information gathered by me, some members of mobs had reached Thakkar Nagar area and by joining the other persons who had gathered there, the members of mobs had broken Bhagyoday Hotel situated near Thakkar Nagar Cross Roads and the shops of Muslim people situated in the surrounding area and committed act of arson. It also came to my knowledge that the shops of Muslims situated in and around Saijpur Tower area were broken and they were also set to fire.

Therefore, I am filing this complaint against the active members of VHP & BJP namely, Kishan Korani, P.J.Rajput, Harish Rohera, Babu Bajrangi and Raju Chobal, who were leading the mobs of about 15,000 to 17,000 persons and shouting “attack – kill” and for instigating members of the mobs today on 28/02/2002 during the course of call for “Gujarat Bandh” in connection with the recent incident of Godhra Carnage at the Godhra Police Station and in respect of breaking shops of Muslim community situated in the areas of Naroda Police Station i.e. S.T. Patia, Nurani Masjid and its surrounding Muslim residential areas, Hussain's Chawl situated opposite Nurani Masjid and near S.T. Workshop and Saijpur Tower area and for breaking Bhagyoday Hotel situated near Thakkarnagar Cross Roads and other shops situated in its

vicinity and looting the said shops and for scuffling with each other and thereby causing death of in all 58 persons including men, women and children, with a request to investigate into the same. My witnesses are police persons who accompanied me at the relevant time, persons posted at the points and the victim residents and owners of houses and shops etc."

The facts stated in my above complaint are true.

Sd/- (Signature of complainant in English)

Before me,
Sd/- (Signature in English)
Police Inspector,
Naroda Police Station.

D. About Charge:

(10) As stated earlier, a joint charge to try all the 62 accused being tried (during the trial A35 had died hence, abated qua him) along with that of deceased accused, the absconding accused and unidentified accused, vide Exh.65.

According to the Charge, the Godhra Train Carnage wherein 58 Hindu Kar Sevaks were done to death, the date of this offence was 28/02/2002, time of the offence was 08:00 A.M. to 10:00 P.M., on the said date and since the call for *Bandh* having been given by *Vishwa Hindu Parishad* to express rage against the Godhra Carnage, to take revenge with the Muslim community, to strike terror and fear amongst the Muslims and with the intention to ransack, destroy and damage the properties of the Muslim and to kill the Muslims, the occurrences took place. All the acts and omissions were

charged as offences to have been committed under Sections 143, 144, 145, 147, 148, 153, 153A, 153A(2), 186, 188, 201, 295, 295A, 298, 302, 307, 315, 323, 324, 325, 326, 332, 395, 396, 397, 398, 427, 435, 436, 440 etc. read along with Section 120B and/or Section 34 and/or Section 149 of the Indian Penal Code.

The charge has also been framed under Section 354 read with Section 34, 376(2)(g) read with Section 34 of Indian Penal Code and Section 135(1) of Bombay Police Act.

The plea of each of the accused was recorded. All of them have pleaded not guilty and have claimed their innocence and have prayed for the trial.

(11) The accused who sought for free legal services, were provided by the order of Court and thus, L.A. Mr. G.S.Solanki and L.A. Mr.H.S.Ravat were appointed to render free legal services to the needy accused.

(12) During the trial, the accused No.35, as shown in the title, had died and therefore, case against the said accused was ordered to be abated.

E. List of Witnesses :

(13) To prove and fortify the prosecution case, the prosecution has examined the witnesses, details whereof are as listed herein below.

(13-A)

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
1	141	Mehmoodbhai Abbasbhai Bagdadi	Occurrence Witness, Complainant, involves none.	DEFENCE Exh.142 - Complaint page-9 & 10 of charge-sheet (I-C.R.No.111/02) by PW-1 Exh.143 - Panchnama of place of offence in case of I-C.R.No.111/02 of Naroda P.S by PW- 1
2	147	Sumar Miya Mohammed Miya Makrani (Gulabsha Kariana Stores)	Occurrence Witness, Complainant, involves none.	Exh.148 - Complaint I-C.R.No.115/02 of PW-2 page No.11, 12 of file No.3 of charge-sheet.
3	153	Bharatsinh Chandansinh Tomar	Panch (Hostile)	Exh.2046 & 2047 (panchnamas) in I-C.R.No.115/02, 129/02 (Exhibited by PW-297)
4	156	Vinod Rambhai Jadhav	Panch (Hostile)	PROSECUTION Exh.2038 (panchnama) in I-C.R.No. 162/02. DEFENCE Exh.384 – Panchnama in I-C.R.No. 161/02. (Exhibited in PW-296)
5	157	Rajusingh Sayarsingh Rajput	Panch (Hostile)	PROSECUTION Exh.2038 - (panchnama) in I C.R. No. 162/02. DEFENCE Exh.384 – Panchnama in I-C.R.No. 161/02 (Exhibited in PW-296)
6	158	Ranjitsinh Vajesinh Bihol	Panch (Hostile)	Exh.1856 (panchnama) in I C.R. No. 179/02. (Exhibited in PW-276)
7	159	Vinodbhai Kalabhai Babaria	Panch (Hostile)	Exh.1856 (panchnama) in I C.R. No. 179/02. (Exhibited in PW-276)
8	161	Zakir Khwajahussain Shaikh	Panch	Exh.162 – panchnama of residence of Jubedabibi (I C.R. No.163/02)
9	163	Mustaqali Masukali Saiyad	Panch	Exh.164 – panchnama of residence of Mehboob Shaikh (I C.R.No.180/02)
10	168	Anilbhai Prakashbhai	Panch (Hostile)	Exh.2039 - Panchnama,. in I-CR No. 184/02

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Naglekar		(Exhibited by PW-296)
11	169	Manuji Babarji Dabhi	Panch (Hostile)	Exh.2040 - Panchnama in I-CR No. 185/02 (Exhibited by PW-296)
12	170	Tirthraj Bansidhar Tiwari	Panch (Hostile)	Exh.2040 - Panchnama in I-CR No. 185/02 (Exhibited by PW-296)
13	173	Gautambhai Rasiklal Chaudhari	Panch (Hostile)	Panchnama of resident of Usman Dawood, but not exhibited.
14	174	Rajesh Shivabhai Rathod	Panch (Hostile)	Panchnama of resident of Usman Dawood, but not exhibited.
15	175	Prakash Ratilal Vyas	Panch M.M. Article No.8 (Hostile)	DEFENCE Exh.888-Panchnama of place of offence and seizure of burnt ashes & control sample mud from that place in I-C.R.No.238/02. (Exhibited by PW-277)
16	176	Sureshbhai Revabhai Gohel	Panch	Exh.177- Recovery panchnama of jewellery from the dead body of one unknown female.
17	184	Shantilal Budharmal Kevlani	Panch (Hostile)	PROSECUTION Exh.185- Witness summons of PW-17 Exh.186- Driving licence & Pan Card BY COURT Exh.187 – Specimen Signature of PW-17
18	188	Dayalbhai Khemchand Lakhani	Panch (Hostile)	Exh.1349 - Panchnama of identification of dead bodies (seven) family members PW-90- (Exhibited in PW-196)
19	191	Dhalumal Udaram Pawar	Panch	Exh.192-Inquest panchnama of dead body of one unknown boy aged about 10 years.
20	193	Nileshkumar Umakant Shah	Panch	Exh.194 - Inquest panchnama of two unknown persons.
21	195	Lalbhai Bababhai Patel	Panch (Hostile)	Exh.662- Inquest Panchnama drawn for death of 58 persons.(as a part) (Exhibited by PW-103 by endorsement)
22	196	Pravinaben Lakhubha Jadeja	Panch (Hostile)	Exh.662 : Inquest Panchnama drawn for death of 58 persons (as a part) (Exhibited by PW-103 by endorsement)
23	202	Dineshbhai Rajabhai	Panch	Exh.203 : Inquest panchnama of the dead body of Sahidabanu

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Sondarwa		Ibrahimbhai Shaikh
24	204	Madhuben Vijaybhai Thakor	Panch	Exh.205 : Inquest panchnama of one unknown male aged about 40 years, one unknown female aged about 30 years and one human remains.
25	206	Mahendrabhai Brijgopal Kanojia	Panch	Exh.207 : Inquest panchnama of Hamidraza Mohammad Maru.
26	209	Kasamali Allauddin Qureshi	Panch	Exh.210 : Inquest panchnama of dead body of Sakina Babubhai Bhatti
27	211	Abdulbhai Ilyasbhai Katiya	Panch	Exh.212 : Inquest panchnama of dead body of Mehboobbhai Khurshidbhai Shaikh
28	213	Kanubhai Gandalal Nai	Panch	Exh.214 : Inquest panchnama of Asif Sabbirbhai.
29	218	Mohammed Rafiq Allabax Shaikh	Panch	Exh.219 : Identification panchnama of Lalbibi Jadikhala and Mumtaz.
30	220	Manguben @ Tejiben Devjibhai Parmar	Panch	Exh.221 : Inquest panchnama of Supriya Marjid.
31	222	Mangilal Bherumal Dhobi	Panch (Hostile)	Three Panchnamas Exh.1345, 1346, 1347 : Panchnama of place of offence in I-C.R.181/02, 182/02 & 183/02 (Exhibited by PW-195)
32	223	Shaileshbhai Vasantrao Dalvir	Panch	Exh.224 : Inquest panchnama of Sarmuddin Khalid Noor Mohammad.
33	231	Ravjibhai Devjibhai Talpada	Panch	Exh.232 - Inquest panchnama of Razzak Babubhai Bhatti.
34	233	Mohammad Yunus Abbaskayum Mansuri	Executive Magistrate	Exh.235 - Yadi Exh.236 - I.P. Panchnama for A-38.
35	237	Baluji Ditaji Solanki	Executive Magistrate	Exh.239 - Yadi Exh.240 - I.P. Panchnama for A-33
36	242	Laxmanbhai Keshavlal Parghi	Executive Magistrate	Exh.244, 245 – Yadi for holding I.Parade of A-53 Exh.246- Original I-Parade Panchnama of A-53 Exh.247, 248 – Yadi for holding I.Parade of A-54 Exh.249 - Original I-Parade

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Panchnama of A-54 Exh.250, 251 – Yadi for holding I.Parade of A-56 Exh.252 - Original I-Parade Panchnama of A-56
37	256	Salim Roshanali Shaikh (eldest son Siddiqui died)	Father and victim Lt. Dalpat Guddu, Darbar, A-22 and A-44.	Exh.258 – application to SIT by PW-37
38	267	Umedhassan Kallubhai Qureshi	Occurrence Witness, complainant, involves none.	Exh.268- I-C.R.No.117/02– complaint of the complainant (Page 13 & 14 of Trial Court record)
39	275	Dr. Umesh Govindlal Vaishnav	Treating Doctor	Injury certificate and case papers (a) Exh.277 and 278, Ahmed Mhd. Hussain (b) Exh.279 & 280, Shoeb Shaikh (aged 20 days) (c) Exh.281 and 282, Shehnaz Munavar. (d) Exh.283 & 284 Raziyabanu Mohammad Aiyub (PW-151) (e) Exh.285 & 286, Ahmed Badshah (PW-154)
40	290	Taufiqbhai Akbarmiya Sumra	Occurrence Witness, complainant, involves none.	Exh.291 – Complaint I-CR No.129/02 by PW-40 (Page No.17 of File No.3 of Trial Court record.)
41	322	Allauddin Adambhai Mansuri	Occurrence Witness, complainant, involves none.	Exh.323- Complaint (I-CR No.153/02) of PW-41 (Page 32 File No.3 of Trial Court record)
42	324	Dr. Hemantbhai Khushabhai Patel	Treatment	(a) Exh.326, 327- Injury certificate and case papers of Shaukat Nabhubhai Mansuri (PW-200)
43	332	Dr. Parul Rameshbhai Vaghela	P.M. Doctor & Injury.	Injury Certificate & Case Papers of (a) Exh.334, 335 - Basir Ahmed (b) Exh.336, 337 : Shabana Abdulrahim, (c) Exh.338, 339 : Kamar Raza Mohammad Maru Pathan (d) Exh.340, 341 : Ayeshabanu Mohammad Maru Pathan.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				(e) Exh.342, 343 : Afsanabanu-PW-160 (f) Exh.344, 345 : Shabbir Ahmed-PW-159 (g) Exh.346, 347 : Sufiyabanu Inayat Saiyad. (h) Exh.348 : P.M. Note of unknown female aged 35 years. (i) Exh.353 - Yadi to obtain PM Note of deceased, Hajrabanu @ Jadi Khala (j) Exh.354 - P.M.No.619/02 of an unknown lady (Page No.1629 to 1635 File No.2 of the Trial Court record in S.C.No. 245/09), (k) Exh.355 -Yadi to RMO for P.M. to keep the dead body in cold room. (l) Exh.356-Marnottar Report submitted by Naroda Police Station of unknown female deceased (m) Exh.357 - Inquest Panchnama of unknown dead-body (carbon copy of Exh.937) (n) Exh.1965, 2023 : Mohammad Maru Raufalikhan Pathan. (PW-191) (o) Exh.1966 : Injury certificate of Shahrukh Shabbir (Kabirali Adambhai Shaikh) (through PW-181) and Exh.2024, letter about non-finding of case papers of Shahrukh Shabbir.
44	360	Dr. Gautam Vrajlal Nayak	Treating Doctor	Injury Certificate & Case Papers of (a) Naimuddin (PW-158) – Exh. 362, 363 (b) Jetunbanu Aslammiya – (PW-206) Exh. 364, 365 (c) Farzanabanu (PW-106) Exh.366, 367 (d) Reshmabanu (PW-147), Exh.368, 369 (e) Saberabanu (PW-214), Exh.370, 371 (f) Usmanbhai Valibhai (PW-163) Exh.372, 373 (g) Yasin Usman (PW-164) Exh.374, 375 (h) Shahjahan Kabir Ahmed (PW-161) Exh. 376
45	380	Sufiyabanu Yakubbhai Shaikh	Occurrence Witness, complainant, involves none.	<u>PROSECUTION</u> Exh.383 – Printed complaint of Sufiyabanu (PW-45) in Naroda I-C.R. No. 161/02. <u>DEFENCE</u>

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Exh.384 - Panchnama of place of offence in I-C.R.No.161/02 of Naroda PS.
46	388	Dr. Chandrakant Karamshibhai Tanna	P.M. Doctor	Exh.389- P.M.Note of unknown male aged 22 years. Exh.390-Intimation of Police Surgeon about non-finding of papers of P.M. No. 424/02. Exh.391 - Page No.1205 to 1211 of file No.2 : P.M. Note of unknown male from Trial Court's record.
47	392	Dr. Rameshchandr-a Bhagubhai Shah	P.M. Doctor	Exh.393 - P.M.Note of unknown male. Exh.394 - Some part of Exh.662. Exh.395 - Page No.1141 to 1147 of P.M.Note from Trial Court's record Exh.396 - Page No.1141 to 1147 of P.M.Note of unknown male from Trial Court's record. Exh.2020 : P.M.Note of deceased, Mohammadsafi Adam Shaikh Exh.2021- Inquest Panchnama of Mohammad Safiq Adam Shaikh.
48	399	Dr. Dharmesh Somabhai Patel	P.M. Doctor	Exh.400 – P.M.Note of unknown male aged 45 years. Exh.401 – Page No.1541 to 1547 of P.M.Note of unknown male from Trial Court's record. Exh.402 - Inquest panchnama of one unknown male.
49	403	Dr. Kalpesh Hiralal Parikh	P.M. Doctor	Exh.404 – P.M.Note of unknown male aged 30 years. Exh.405 - Page No.1275 to 1281 of P.M.Note of unknown person from Trial Court's record. Exh.406 – Part of Exh.662.
50	410	Dr. Deepak Champaklal Jangani	P.M. Doctor	Exh.411 - P.M.Note of Asif Shabbirbhai.
51	420	Dr. Vikram Kalidas Parghi	P.M. Doctor	Exh.421 – P.M.Note of Hamidraja Mohammad Maru. Exh.422–Marnottar Report submitted by Naroda P.S. of deceased, Hamidraja Mohammad Maru. Exh.423 -P.M.Note of Gulab Kalubhai Vanzara(deceased accused)
52	425	Ameena Abbasbhai	Victim Involves A-	<u>PROSECUTION</u> Exh.427 – Application of PW-52,

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Belim	44, 37, 38, Guddu, A-22	Amina Abbas Belim to SIT. DEFENCE Exh.430 – Xerox photograph of Amin Abbas on page No.26 of Combat Magazine. Exh.431–Payment voucher regarding payment receiving by Amina Abbas by Confisec Printers, Ahmedabad.
53	434	Abzalbanu Liyakat Hussain Zalori	Occurrence Witness, complainant, involves none.	Exh.437 - Complaint of Abzalbanu Liyakat Hussain, PW-53. (I-C.R. No. 127/02)
54	442	Zubedabibi Rashidbhai Shaikh	Complainant Late Guddu	Exh.443- Printed complaint of Naroda I-C.R.No.163/02, Zubedabibi Rashidbhai Shaikh (PW-54)
55	444	Farooq Kasambhai Saiyad	Occurrence Witness, complainant, involves none.	Exh.445-Printed complaint of Naroda I-C.R.No.176/02, Farooq Kasambhai Saiyad (PW-55)
56	448	Kamrunnisha Muradali Shaikh	Complainant A-22	Exh.449-Printed complaint of Naroda I-C.R.No.164/02, Kamrunnisha Muradali Shaikh (PW-56)
57	452	Sairabanu Mehboobbhai Shaikh	Occurrence Witness, complainant, involves none.	Exh.453– Printed complaint of Naroda I-C.R.No.181/02, Sairabanu Mehboobbhai Shaikh (PW-57)
58	454	Munawar Samuddinsha Shaikh	Occurrence Witness, complainant, involves none.	Exh.455 – Printed complaint of Naroda I-C.R.No.183/02, Munirsha Sarmuddin Shaikh (PW-58)
59	456	Sharmuddin Khwajahussain Shaikh	Occurrence Witness, complainant, involves none.	Exh.457 – Printed complaint of Naroda I-C.R.No.185/02, Sarmuddin Khwajahussain Shaikh (PW-59)
60	458	Usmanbhai Dawoodbhai Shaikh	Occurrence Witness, complainant, involves none.	Prosecution Case
61	462	Abdul Karim Saiyad Rasul Shaikh	Occurrence Witness, complainant, involves	Exh.312 & Exh.463 – F.I.R. of Naroda I-C.R.No.187/02 and printed complaint of Abdul Karim Saiyad Rasul (PW-61)

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			none.	
62	464	Bijanibegum Usmanbhai Shaikh	Occurrence Witness, complainant, involves none.	Exh.465 – Printed complaint of Naroda I-C.R.No.188/02, Usman Dawoodbhai (PW-60)
63	469	Hirabhai Dugarbhai Makwana	Circle Inspector (MAPs)	Exh.470 - Yadi for the map of the place of offence. Exh.471 - Letter to send map of the place of offence Exh.473 - Endorsement in Yadi by SIT to Circle Inspector for map. Exh.474 (Part 1 to 5) - Total four maps of the place of offence. (Exh.474/1 to 474/5) Exh.479 – Rough map prepared by PW-63
64	489	Gulam Rasul Saeed Rasul Shaikh	Occurrence Witness, involves none. (Hostile)	Prosecution Case
65	490	Abdul Rahim Abdul Wahab Shaikh	Occurrence Witness, involves none.	Prosecution Case
66	491	Babubhai Mohammad Hussain Budeli	Occurrence Witness, involves none.	Prosecution Case
67	492	Afzal Abdul Rauf Abdal	Occurrence Witness, involves none.	Prosecution Case
68	496	Naseembanu Mohammad Khalid Saiyad	Occurrence Witness, involves none.	Prosecution Case
69	497	Badshah Abdul Kadar Qureshi	Occurrence Witness, involves none.	Prosecution Case
70	499	Jubaidakhatun Rahimbhai Shaikh	Complainant	Exh.500 - Printed application with loss-damage form of Jubaidakhatun Rahim Miya (PW-70)
71	503	Dr. Sunil Ramnivas Mittal	Treating Doctor	Exh.504, injury certificate of Yasin A. Majid (through PW-156) Exh.506 - Case papers of Yasin Abdul Majid (page No.1 to 35 and one x-

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				ray) (through PW-156) Exh.507 - Injury Certificate of Bablu Mehboobbhai. Exh.509 – Case papers of Bablu Mehboobbhai (page No.1 to 34, and one x-ray plate)
72	510	Sakilabanu Firozahmed Ansari	Victim, Involves Lt. Bhavani, Guddu and A -22, 26 & 28.	Exh.511 - Application to SIT by PW-72, Sakilabanu Firozahmed Ansari.
73	514	Basubhai Mohiyuddin Saiyad	Victim Involves Lt. Bhavani, Dalpat, A-1, A-55, A-22, A-20, A-25, Guddu, A-41, A-2 & A-38.	Exh.518 – Printed complaint of Naroda I-C.R.No.182/02, Basubhai Moiyuddin Saiyad (PW-73) Exh.520- Application of PW-73 to SIT.
74	523	Sardar Ali Kasam Ali Saiyad	Occurrence Witness, involves none.	Prosecution Case
75	525	Mohiyuddin Shaikh	Victim Lt. Bhavani & Guddu	Prosecution Case
76	526	Mohammad Hussain Munirbhai Shaikh	Victim Lt. Bhavani & Guddu	Exh.528- Application of PW-76 to SIT.
77	529	Rashidkhan Ahmedkhan Makrani	Occurrence Witness, involves none.	Prosecution Case
78	530	Noor Mohammad Sarmuddin Shaikh	Occurrence Witness, complainant, involves none.	Exh.532 - Printed complaint along with Loss Damages Form of PW-78.
79	533	Ibrahimbhai Alambhai Mansuri	Victim Involves Lt. Bhavani	Prosecution Case
80	539	Mehboobbhai Umarbhai Shaikh	Occurrence Witness, involves none.	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
81	540	Chandbhai Saiyadbhai Ratal	Victim Involves Lt. Guddu	Prosecution Case
82	541	Pirubhai Ismailbhai Solapuri	Victim Involves Lt. Guddu	Prosecution Case
83	542	Fatimabibi Makbulbhai Shaikh	Victim Involves Lt. Bhavani, Guddu, A-25 & 26	Prosecution Case
84	543	Dr. Ajay Krishnanan	Injury Certificate	Exh.544 - Injury Certificate of Zarinabanu Naimuddin (PW-205) Exh.546 - Case papers (Page 1 to 28 and 11 x-ray) of Zarinabanu Naimuddin.
85	551	Yunusbhai Mohammadbh-ai Shaikh	Occurrence Witness, complainant, involves none.	Exh.553 - Printed Complaint alongwith Loss Damage Form of PW-85, Yunusbhai Mohammadbhai Shaikh.
86	554	Raziyabanu Yakubbhai Shaikh	Occurrence Witness, involves none.	Prosecution Case
87	555	Tamizanbanu Taufiq Miya Sumara	Occurrence Witness, involves none.	Prosecution Case
88	556	Jamilabanu Mehboob Hussain Shaikh	Occurrence Witness, involves none.	Prosecution Case
89	557	Abdul Rashid Abdul Karim Shaikh	Occurrence Witness, involves none.	Prosecution Case
90	559	Gauriben Mohammad Mashak Qureshi	Victim Lt. Guddu, Bhavani & Dalpat.	Prosecution Case
91	564	Salim Yusufbhai Mansuri	Occurrence Witness, involves none.	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
92	565	Abdullahaq Abdul Rahim Luhari	Occurrence Witness, involves none.	Prosecution Case
93	567	Jaydabanu Iqbal Ahmed Shaikh	Occurrence Witness, involves none.	Exh.569 : Application to SIT by Jaydabanu Iqbal Ahmed Shaikh (PW-93)
94	570	Akbar Subhani Nazir Ahmed Munshi	Victim Involves Accused - Lt. Bhavani,A-25	Prosecution Case
95	577	Dr. Jayesh Himmatlal Solanki	P.M. Doctor	Exh.578 - P.M.Note of Sofiyabanu Mamudbhai Shaikh. Exh.579 - P.M.Note of unknown female aged 40 years.
96	581	Dr. Jayendra Rasiklal Modi	P.M. Doctor	Exh.582 - P.M.Note of unknown female aged 30 years. Exh.583 - P.M.Note of Saeedabanu Ibrahim Shaikh. Exh.584 - P.M.Note of Jubaidabanu Shabbir Ahmed Shaikh. Exh.585 - P.M.Note of unknown female aged 35 years.
97	596	Dr. Hemant Dahyabhai Patel	P.M. Doctor	PROSECUTION Exh.597 - P.M.Note of unknown male aged 10 years. DEFENCE Exh.598 - Marnottar Form (Police Report) of unknown dead body.
98	600	Dr. Anupsing Hiraji Thakur	P.M. Doctor	PROSECUTION (a) Exh.601 – P.M.Note of unknown male aged 25 years. (b) Exh.602 – P.M.Note of unknown male. (c) Exh.603 – P.M.Note of unknown male aged 12 years. (d) Exh.604 – P.M.Note of unknown female aged 20 years. (e) Exh.605 – P.M.Note of unknown male aged 35 years. DEFENCE (a) Exh.607– Marnottar Form of unknown male (b) Exh.608 – Marnottar Form of

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				unknown child (c) Exh.609 – Marnottar Form of unknown child (d) Exh.610 – Marnottar Form of unknown male (e) Exh.611 – Marnottar Form of one unknown male.
99	616	Dr. Kiritkumar Ratilal Shah	P.M. Doctor	(a) Exh.617 – P.M.Note of unknown male. (b) Exh.618 – P.M.Note of unknown male aged 32 years. (c) Exh.619 – P.M.Note of unknown female male aged 12 years.
100	622	Dr. Rakesh Suryakant Bhavsar	P.M. Doctor	(a) Exh.623 – P.M.Note of unknown child aged 7 years. (b) Exh.624 – P.M.Note of unknown male aged 35 years. (c) Exh.625 – P.M.Note of unknown child aged 8 years. (d) Exh.626 – P.M.Note of unknown male aged 30 years. (e) Exh.627 - Yadi to R.M.O., Civil Hospital while depositing P.M.Notes by Dr.R.S. Bhavsar (PW-100) (f) Exh.1944 – Intimation of Police Surgeon for non-finding of case papers of PM Note No. 543/02.
101	632	Dr. Dilipkumar Shankarlal Vyas	P.M. Doctor	(a) Exh.633 – P.M.Note of unknown female male aged 32 years. (b) Exh.634 – P.M.Note of unknown female aged 15 years. (c) Exh.635 – Marnottar report of unknown girl (PM 523) (d) Exh.636 – Marnottar report of unknown lady (PM 524)
102	637	Dr.Mahendra Harjivandas Sanichhara	P.M. Doctor	(a) Exh.638 – P.M.Note of unknown male aged 30 years. (b) Exh.639 – P.M.Note of unknown female aged 35 years. (b) Exh.642 – P.M.Note of unknown male child aged 5 years. (c) Exh.643 – P.M.Note of unknown female aged 12 years.
103	656	Dr. Jayant Somabhai Kanoriya	P.M. Doctor	(a) Exh.657 – P.M.Note of unknown female aged 25 years. (b) Exh.658 – P.M.Note of unknown male aged 20 years.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				(c) Exh.659 – P.M.Note of unknown female aged 25 years. (d) Exh.661 – Intimation by Police Surgeon, Civil Hospital with reference to P.M.No.575, 576 & 577/02. (e) Exh.662 – Inquest Panchnama drawn for death of 58 persons of khancha / water tank / evening occurrence.
104	668	Mohammad Salim Mohammad Hussain Shaikh	Victim Involves A-2, 20, 41, 37, 58	Exh.669 - Application by PW-104, Mohammadsalim Mohammadhussain Shaikh to SIT. Exh.670 - Application by PW-104, Salimbhai Mohammad Hussain Shaikh and others to SIT.
105	676	Hussainbhai Valibhai Kaladiya	Victim Involves Lt. Bhavani, Guddu, A-41, 22,44 & 25	Exh.678-Printed complaint of Hussainbhai Valibhai Kaladiya, PW-105.
106	687	Farzanabanu Aiyubkhan Pathan	Victim Involves Lt. Bhavani, A-26, 25 & 28.	Exh-690-Application by PW-106, Farzanabanu Aiyubkhan Pathan to SIT.
107	698	Mohammedbh-ai Kalubhai Khalifa	Victim Involves Accused Dalpat, A-44 & 57.	<u>DEFENCE</u> Exh.699 Application and Loss-Damages Form from the charge-sheet of Trial Court's record submitted vide pursis Exh.47. <u>PROSECUTION</u> Exh.700-Application by PW-107, Mohammadbhai Kalubhai Khalifa to SIT
108	702	Iqbalhussain Amirmiya Qureshi	Victim Involves A-41 & 44.	Prosecution Case
109	704	Sarfarazkhan Mehboobkhan Pathan	Victim Involves Lt. Bhavani, A-26, 41, 22 & 39.	Prosecution Case
110	707	Noor Mohammaed Ismailbhai Mansuri	Victim Involves A-36. (Hostile)	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
111	709	Mehbla Hussain Munir Ahmed Shaikh	Occurrence Witness, involves none.	Prosecution Case
112	717	Fatimabibi Mohammed Yusuf Shaikh	Victim Involves Lt. Bhavani, Guddu A-26, 22 & 25.	Exh.718 - Application by PW-112, Fatimabibi Mohammadyusuf Shaikh to SIT.
113	719	Jainul Abedin Mohammed Khwaja Shaikh	Victim-Complainant Involves A-41, Guddu, Bhavani & A-28.	PROSECUTION Exh.721-Application by PW-113, Jainul Abedin Mohammadkhwaja Shaikh to SIT. Exh-724-Printed complaint by PW-113, Jainul Abedin Shaikh. DEFENCE Exh-725-Page Nos.223 & 224 of charge-sheet papers of Trial Court's record produced vide pursis Exh.47
114	740	Rehmanbhai Shakurbhai Saiyad	Victim Involves Lt. Bhavani, Guddu & A-22.	PROSECUTION Exh-741-Application by PW-114, Rehmanbhai Shakurbhai Saiyad to SIT. DEFENCE Exh.742- Page Nos.10 to 13 of Affidavit in charge-sheet papers produced vide pursis Exh.739.
115	747	Ibrahim Chhotubhai Shaikh	Victim Involves A-44, Lt. Guddu & A-2.	Exh.749 - Printed complaint by PW-115, Ibrahim Chhotubhai Shaikh
116	753	Lalabhai Nizambhai Luhar	Victim Involves A-4, 5, 6, 7, 9, 11 & 22.	Prosecution Case
117	754	Anisbhai Nasirkhan Mansuri	Victim Involves accused Lt. Bhavani, Guddu & A-4.	Prosecution Case
118	759	Dr. Kalpesh S. Kotariya	P.M. Doctor	Exh.760 : P.M.Note of Shakina Babubhai Bhatti.
119	761	Dr.Tapan Jitendrabhai Mehta	P.M. Doctor	PROSECUTION (a) Exh.762 - P.M.Note of Shakina Mehboob.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				(b) Exh.763 - P.M.Note of Mehboob Khurshidbhai Shaikh. (c) Exh.764 - Yadi to draw Inquest Panchnama of Mehboobbhai Khurshidbhai Shaikh. <u>DEFENCE</u> (a) Exh-765-Marnottar Form (Police Report) of Mehboob Khurshidbhai Shaikh and Receipt along with it.
120	773	Dr. Mitesh Bhagwanbhai Patel	P.M. Doctor	(a) Exh.774 – P.M.Note of unknown female aged 45 years. (b) Exh.775 – P.M.Note of unknown male child aged 2 years. (c) Exh.776 – P.M.Note of unknown female (d) Exh.777 – P.M.Note of unknown female child aged 7 years.
121	778	Dr. Harshadkumar Kantilal Rathod	P.M. Doctor	<u>PROSECUTION</u> (a) Exh.779 – P.M.Note of Supriya Marjid <u>BY COURT</u> (a) Exh.780 – Death report of Supriya Marjid
122	781	Dr. Dhiren Jagdishbhai Mankad	P.M. Doctor	(a) Exh.782 – P.M.Note of unknown female aged 35 years. (b) Exh.784 – Intimation by Police Surgeon, Civil Hospital for P.M.No. 590-538/02.
123	786	Dr. Jayesh Balwantsinh Rupala	P.M. Doctor	(a) Exh.787 – P.M.Note of unknown male aged 30 years. (b) Exh.788 – P.M.Note of unknown female aged 25 years. (c) Exh.789 – P.M.Note of unknown male child aged 7 years.
124	794	Dr. Bhavin Shyamlal Shah	P.M. Doctor	(a) Exh.795 – P.M.Note of unknown male aged 40 years. (b) Exh.796 – P.M.Note of unknown female aged 30 years. (c) Exh.797 – P.M.Note of unknown male aged 30 years.
125	798	Dr. Gitanjali Phukan	P.M. Doctor	(a) Exh.799 – P.M.Note of unknown male aged 22 years. (b) Exh.800 – P.M.Note of unknown

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				child aged 8 years (c) Exh.801 – P.M.Note of unknown child aged 5 years.
126	802	Dr. Deepak Mohanlal Sharma	P.M. Doctor	(a) Exh.804 – P.M.Note of unknown male aged 14 years (b) Exh.806 – Intimation by Police Surgeon, Civil Hospital for P.M.No. 531/02. (c) Exh.807 – P.M. Note of unknown male aged 22 years.
127	812	Dr. Pratik Ravjibhai Patel (For Dr. D. D. Patel	P.M. Doctor	Exh.813 - P.M.Note of Razzak Babubhai Bhatti
128	814	Dr. Rajendrakumar Bhagirath Prasad Joshi	P.M. Doctor	(a) Exh.815 – P.M.Note of unknown male child aged 1 year. (b) Exh.816 – P.M.Note of unknown male aged 40 years. (c) Exh.818 – P.M.Note of Kudratbibi Khurshidbhai. (d) Exh.819–P.M.Note of Shermoddin Khalid Noor Mohammad
129	820	Dr. Jayeshkumar Maganlal Joshi	P.M. Doctor / Treating Doctor	(a) Exh.821 – P.M.Note of unknown female aged 25 years. (b) Exh.822 – P.M.Note of unknown male child aged 5 years. (c) Exh.824 – Intimation from Police Surgeon, Civil for P.M.No.591/02.. (d) Exh.825 – P.M.Note of unknown male child aged 3 years.
130	832	Urvashi Silvant Gohel	Official for D.D. Executive Magistrate	<u>PROSECUTION</u> (a) Exh.834 - Yadi to record D.D. of deceased, Sufiyabanu and others. (b) Exh-835-Yadi of Naroda P.S. for D.D. (c) Exh.836 - Original D.D. of deceased, Sufiyabanu Abdulmajid Shaikh. (d) Exh-837 - D.D. of deceased, Sarmuddin Khalid Nurmohammad. <u>DEFENCE</u> (e) Exh-838-D.D. of Shahjahan Kabir Ahmed Shaikh, (PW-161) (f) Exh-839- D.D. of Shabbir Ahmed Munir Ahmed Shaikh (PW-159) (g) Exh-840- D.D. of Farzanabanu Aiyubkhan (PW-106)

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				(h) Exh-841- D.D.of Naimuddin Ibrahimbhai Shaikh (PW-158) (i) Exh-842- D.D of Mohammad Maru Alikhan Pathan (PW-191) (j) Exh-843- D.D. of Sabera Abdul Aziz Shaikh (PW-214) (k) Exh-844- D.D. of Usmanbhai Valibhai Mansuri (PW-163) (l) Exh-845- D.D. of Yasin Usmanbhai Mansuri (PW-164) (j) Exh.846 - D.D. of Sufiyabanu Inayat Ali Saiyad(husband of PW-251) (k) Exh.847- D.D. of Afsana Rehmanbhai Saiyad (PW-160)
131	849	Vishnubhai Dhanjibhai Prajapati	Executive Magistrate	(a) Exh.851-Yadi to record D.D. of deceased, Mehboobbhai Khurshid Ahmed. (b) Exh-852 - Yadi to record D.D. of deceased, Sakinaben Farooq Ahmed Kalubhai Bhatti (c) Exh-853 - D.D. of deceased, Mehboobbhai Khurshid Ahmed. (d) Exh-854 – D.D. of deceased, Sakinaben Farooq Ahmed Bhatti.
132	861	Dr. Ajay M. Patel	P.M. Doctor	(a) Exh.862 – P.M.Note of unknown female aged 8 years. (b) Exh.863 – P.M.Note of unknown female aged 4 years. (c) Exh.865– Intimation of Police Surgeon, Civil for P.M.No.532/02. (d) Exh.866 – P.M.Note of unknown female aged 35 years.
133	874	Abdul Rahim Abdul Gaffur Shaikh	Panch for discovery.	Exh.875 – Discovery Panchnama of weapon (Sword) by A-22, Suresh @ Richards @ Suresh Langado Kantilal Dedawala (Chhara).
134	876	Dr. Chirayu Pamecha	Treating Doctor	Exh.878 -Case papers and Injury Certificate of Kulsumbanu Ibrahimbhai (PW-153)
135	879	Hussainabanu Ajgarkhan Pathan	Victim, Complainant Involves A-38.	<u>PROSECUTION</u> Exh.880-Complaint of Naroda I-C.R. No.238/02, Hussainabanu Ajgarkhan Pathan (PW-135) Exh.896 - Application by PW-135 Husainabanu Ajgarkhan Pathan, to SIT. <u>DEFENCE</u>

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Exh.888- Panchnama of place of offence and seizure of burnt ashes & control sample earth from that place in I-C.R.No.238/02 of Naroda Police Station.
136	898	Bashirkhan Nanhekhan Mansuri	Victim Involves A-37, A-26, A-44, Lt. Guddu.	PROSECUTION Exh- 907- Application by PW-136, Bashirkhan Nanhekhan Mansuri to SIT. DEFENCE Exh.904- Statement of PW-136.
137	915	Rafikanbanu Rehmanbhai Saiyad	Victim Involves Lt. Guddu, Bhavani. A-61, A-56, A-55 & A-22.	DEFENCE Exh.920- Affidavit at Page Nos.14 to 17 in Transfer Application to be kept with charge sheet produced vide pursis Exh.739.
138	928	Mohammadbh-ai Abdul Hamid Shaikh	Victim and Panch Involves Lt. Dalpat, Guddu. A-26.	Exh.929- Panchnama of place of offence in case of I- C.R. No. 187/02 of Naroda Police Station. Exh.931-Panchnama of place of offence in case of I-C.R. No.177/02 of Naroda Police Station
139	936	Sudhaben Gautambhai Chaudhari	Panch (Inquest)	Exh.937- Inquest panchnama of one unknown female aged about 35 years (original of Exh.357)
140	948	Shakurbhai Tajubhai Shaikh	Victim Lt. Guddu.	PROSECUTION Exh-950- panchnama of damage to house of PW-140 and damage to Rickshaw No.GRS 8 and Rickshaw No. GJ-1-VV-4487. Exh-953 - Application by PW-140, Shakurbhai Tajubhai Shaikh to SIT DEFENCE Exh.952- Panchnama of Rickshaw No. GJ-1-TT-440
141	956	Kaiyumkhan Rashidkhan Pathan	Victim Involves Lt. Guddu & Bhavani	DEFENCE Exh. 960- Affidavit at Page Nos.18 to 20 in transfer application kept with charge-sheet produced vide pursis Exh.739.
142	961	Jannatbibi Kallubhai Shaikh	Victim Lt. Guddu, Bhavani. A-18, A-22, A-	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			26, A-44, elder daughter of Bhavani, son of Bhavani-A-40	
143	975	Dildar Umrao Saiyad	Victim Involves A-37, 44, 2, 55, Lt. Guddu and Govind.	PROSECUTION Exh.1051- Application of PW-143, Dildar Umrao Saiyad DEFENCE Exh.976- Page Nos.1 to 5 of Misc. Criminal Application No.2015/09 in Cr.M.A.No.1943/2009 before Hon'ble High Court of Gujarat. Exh 981- Pages No.1 to 25 of Trial Court, application u/s. 173(8) Exh.982 - FIR I-C.R.No.100/02 and Panchnama. Exh.1055- Panchnama of loss & damage to house of PW-143 Exh.1056- Certified copy of Criminal Misc.Application No.650/10 along with order.
144	998	Sarfarazkhan Abbaskhan Pathan	Victim Involves A-27, 44, 22 & Lt. Guddu.	Prosecution Case
145	999	Shahnawaz Abbasbhai Pathan	Victim Involves A-27, A-22, A-10, A-44, A-2, A-41.	Prosecution Case
146	1007	Iqbalbhai Ismailbhai Mansuri	Victim Involves A-36.	Prosecution Case
147	1013	Reshmabanu Nadeembhai Saiyad	Victim Involves Lt. Guddu, Bhavani. A-22,	PROSECUTION Exh.1016- Application to by PW-147 Reshmabanu Nadeembhai Saiyad to SIT. DEFENCE Exh.1017- Affidavit page Nos.21 to 26 of Trial Court record kept with charge sheet produced vide pursis Exh.739 in transfer petition.
148	1022	Nazir Mohammad	Victim	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Faiz Mohammad Shaikh	Lt. Guddu.	
149	1028	Faridaben Abdulkadar Khalifa	Victim Involves A-44, 20, 5, 22, 26, 45, 41, 2, 37, 18.	PROSECUTION Exh.- 1034- Application of Faridaben Abdulkadar Khalifa PW-149. DEFENCE Exh- 1036- Panchnama of loss & damage to house of PW-149
150	1041	Ishaqkhan Sardarkhan Pathan	Victim Involves A-22, 26, 42 and Lt. Bhavani.	Exh. 1045 – Application of PW-150, Ishaqkhan Sardarkhan Pathan to SIT
151	1057	Raziyabanu Mohammad Aiyub Shaikh	Occurrence Witness, involves none.	Prosecution Case
152	1061	Parveenbanu Salambhai Qureshi	Occurrence Witness, involves none.	Prosecution Case
153	1062	Kulsumben Ibrahim Mansuri	Occurrence Witness, involves none.	Prosecution Case
154	1065	Ahmed Badshah Mehboob Hussain Shaikh	Occurrence Witness, involves none.	DEFENCE Exh.1066 – Copy of D.D. of PW-154, Ahmed Badshah, page No.967 of trial record.
155	1067	Shehnazbanu Munavarbhai Shaikh	Occurrence Witness, involves none.	Prosecution Case
156	1072	Abdulmajid Mohammad Usman Shaikh	Victim Involves A-1, A-37, A-10, A-22, A-28, A-54, accused Tiniyo and Lt. Guddu, Dalpat, Bhavani.	PROSECUTION Exh.1096- Application by PW-156, Abdulmajid Mohammad Usman Shaikh to SIT. DEFENCE Exh. 1082- Panchnama of loss and damages of house of PW-156 through pursis, Exh.1081. Exh. 1083- Panchnama of loss and damages of the house of PW-156 vide pursis Exh.1081 Exh.1094- Affidavit in Transfer Petition by PW-156

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Exh. 1095 – Application to Witness Protection Cell, SIT by PW-156
157	1108	Mohammad Shafi Allabax Mansuri	Victim Involves Lt. Guddu, A-22, A-44, A-62.	Exh.1111 - Complaint by Mohammad Shafi Allabax Mansuri for loss & damage form (PW-157) Exh.1112 –Application by PW-157, Mohammad Shafibhai Allabax to SIT.
158	1124	Naimuddin Ibrahim Shaikh	Victim Involves A-30, Shashikant @ Tiniyo Marathi	<u>PROSECUTION</u> Exh.1130 -Application by PW-158, Naimuddin Ibrahim Shaikh to SIT. <u>DEFENCE</u> Exh.841 – D.D. of the witness through PW-130. (Exhibited by PW-130)
159	1143	Shabbir Ahmed Munir Ahmed Shaikh	Occurrence Witness, involves none.	Prosecution Case
160	1144	Afsanabanu Rehmanbhai Saiyad	Occurrence Witness, involves none.	Prosecution Case
161	1146	Shahjahan Kabirali Shaikh	Occurrence Witness, involves none.	Prosecution Case
162	1149	Rafiq Kallubhai Shaikh	Victim Involves A-22, Lt. Bhavani, Guddu.	Exh. 1151 – Panchnama regarding loss to the house of PW-162 Exh. 1152 – Affidavit filed in the Supreme Court by Rafiqbhai Kallubhai Shaikh (PW-162)
163	1155	Usmanbhai Valibhai Mansuri	Occurrence Witness, involves none.	Prosecution Case
164	1156	Yasin Usmanbhai Mansuri	Occurrence Witness, involves none.	Prosecution Case
165	1157	Pirmohammad Allabax Shaikh	Declared Hostile Occurrence Witness, involves none.	Prosecution Case
166	1162	Shahinbanu	Victim	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Mohammad Hasan Qureshi	Involves Lt. Bhavani & Guddu.	
167	1163	Mohammad Hussain Kayumbhai Shaikh	Victim Involves A-22, A-41, A-34.	Prosecution Case
168	1168	Ayshabibi Abdulkadar Shaikh	Victim Involves Lt. Bhavani, Guddu. A-22.	Prosecution Case
169	1169	Belim Jubaidaben Mohammad Idrish	Victim Involves A-44, 22, Lt. Bhavani & Guddu.	Prosecution Case
170	1174	Mohammad Jallaludin Ibrahim Shaikh	Victim Involves A-10, 22, 39, 44, Lt. Bhavani & Guddu.	Prosecution Case
171	1177	Mustaq Ahmed Abdul Razzak Shaikh	Victim Involves A-22, Lt. Guddu.	Exh.313 – I-C.R.No.188/02 is FIR dated 16.3.02 which is at Sr.No.7 in Exh. 313. (only referred)
172	1186	Arifali Kasamali Saiyad	Victim Involves A-1 and Lt. Guddu.	Prosecution Case
173	1190	Mohammad Nasim Shaikh Buddhu Shaikh	Victim Involves A-25	<u>DEFENCE</u> Exh.1192 – Printed Complaint-application of Mohammad Nasir Shaikh Buddhu Shaikh alongwith loss-damage form.
174	1198	Abdulalim Abdulmajid Chaudhari	Victim Involves A-22, A-41, A-18, Lt. Bhavani & Guddu.	Prosecution Case
175	1205	Yakubali	Victim	Exh.1207-Printed complaint of PW-

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Kasamali Saiyad	Lt. Guddu and Bhavani. A-10, A-41, A-44, A-22.	175, Yakubali Kasamali
176	1212	Julekhabanu Sardar Ahmed Sarmuddin Chaudhari	Victim Involves A-25, 28, 37.	Exh.1213 – Application by PW-176, Julekhabanu Sardar Ahmed Sarmuddin Chaudhari to SIT.
177	1218	Isratjahan Parvez Hussain Saiyad	Victim Involves A-4, 26, 56, 61.	Prosecution Case
178	1227	Pravinkumar Natthubhai Barot	I.O. - 2 Involves A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, A-12, A-13, A-14, A-15, A-16, A-17.	(a) Exh.1228 – Seizure panchnama of the V.C.D. of the place of offence of I-C.R.No.100/02 of Naroda Police Station. (b) Exh.1229- Panch Slip of muddamal article No.6. (c) Exh.1230- Panch slip of Videography cassettes, muddamal article No.6. (d) Exh.2004 - An order of Police Commissioner to merge I-CR No. 238/02 into I-CR No. 100/02.
179	1240	Nasimbanu Abdul Rehman Shaikh	Victim Involves A-44.	Prosecution Case
180	1251	Aslambhai Shamsherbhai Shaikh	Victim Involves A-22.	Prosecution Case
181	1252	Apsarabegum Kabirali Shaikh	Victim Involves A-22, Lt. Guddu & Bhavani.	Exh.1253 - Application by PW-181, Apsarabegum Kabirali Shaikh to SIT. Exh.2024 : Correspondence from Civil is on record by PW-43 treating doctor of Shahrukh.
182	1259	Bhikhabhai Habibbhai Mansuri.	Victim Involves A-1, A-10, Lt. Bhavani & Guddu.	<u>DEFENCE</u> Exh.1261 – Printed complaint-application as well as loss-damage/analysis form of PW-182 Bhikhabhai Habibbhai Mansuri – page 1 to 4 (through pursis Exh. 1260)
183	1263	Bashirbhai Usmanbhai Shaikh	Victim Involves A-26, 42, Lt.	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			Bhavani & Guddu.	
184	1271	Mohammad Hanif Yusufbhai Shaikh	Victim Identified A-2, A-10, A-26, A-1, A-41, A-22, A-40, A-20, A-44.	Prosecution Case
185	1275	Mohammad Ayub Shofilal Shaikh	Victim Involves A-25, A-22, Lt. Bhavani & Guddu.	Prosecution Case
186	1277	Taherabanu Mohammad Kasam Abdulla Shaikh	Victim	Prosecution Case
187	1279	Altaf Hussain Abdul Rehman Saiyad	Victim Involves A-25.	Prosecution Case
188	1282	Mohammadbh-ai Bachubhai Belim	Victim Involves A-22, 25, 41, 44 & Lt. Bhavani.	DEFENCE Exh.1283 – Printed complaint of application by PW-188, Ibrahim Dawoodbhai Mansuri. Exh.316 – F.I.R. of Naroda I-C.R.No. 210/02, Ibrahim Dawoodbhai Mansuri.
189	1289	Mohammad Imran Imtiyaz Momin	Victim Involves A-1, 10, 22, 41.	Exh.1291 – Application by PW-189, Mohammad Imran Imtiyaz Momin to SIT.
190	1295	Salauddin Abdul Karim Shaikh	Victim Involves A-41 and Lt. Guddu.	Exh.670 – Collective application of many witnesses.
191	1302	Mohammad Maharuf Abdul Raufkhan Pathan	Victim Involves Lt. Guddu & Bhavani.	Exh.1303 - Panchnama regarding identification of the dead body of Sohail Khan by the witness, Razzakbhai Usmanbhai. Exh.1306–Application by PW-191, Mohammad Maharuf Abdul Raufkhan Pathan to the Chairman, SIT to record their statement. Exh.842 - D.D. of this PW.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
192	1314	Rashidabanu Imtiyaz Hussain Momin	Victim Involves A-41, A-58, A-1, A-37, A-44.	Exh.1315 – Application by PW-192, Rashidabanu Imtiyaz Hussain Momin to SIT.
193	1325	Ibrahim Hasanbhai Shaikh	Victim Involves A-44, Lt. Guddu & Bhavani.	Prosecution Case
194	1332	Prakashbhai Balchand Gordasani	Panch (Hostile)	Prosecution Case
195	1344	Balvantsinh Vijaysinh Jhala	Panch	(a) Exh.1345-Panchnama of place of offence in case of I-C.R.No.181/02 of Naroda P.S. (b) Exh.1346-Panchnama of place of offence in case of I-C.R.No.182/02 of Naroda P.S. (c) Exh.1347-Panchnama of place of offence in case of I-C.R.No.183/02 of Naroda P.S.
196	1348	Dilip Santomal Goplani	Panch (Hostile)	Exh.1349 - Panchnama regarding identification of dead bodies (seven) family members PW-90 - Jahedabibi Qureshi.
197	1354	Kherunisha Riyazuddin Shaikh	Victim Involves Lt. Guddu & Bhavani.	Exh.1355 - Application by PW-197, Kherunisha Riyazbhai Shaikh to SIT.
198	1363	Harun Mohammadbh-ai Shaikh	Victim Involves A-37, A-18, A-52, A-45, A-26, A-41, A-22 and A-44, A-25, and Lt. Guddu.	Exh.1364 - Application by PW-198, Harun Mohammadbhai Shaikh to SIT.
199	1375	Noor Mohammad Nazir Mohammad Mev (Pathan)	Victim Involves A-22, 25, Lt. Guddu & Bhavani.	Prosecution Case
200	1381	Shaukat Nabibhai	Victim	PROSECUTION Exh.240 - I.P. Panchnama wherein A-

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Mansuri	Involves A-44 and A-33 was identified in I-Parade.	33 was identified (Exhibited by PW-35) Exh.1426 Station Diaries (page No. 42, entry No.13) Exh.1427 - Station Diaries (page No. 50, entry No.18) <u>DEFENCE</u> Exh.1428 - Yadi of Naroda P.S. to the Magistrate with arrest memo of the accused to be kept in custody.
201	1388	Sattarbhai Mohammad Hussain Shaikh	Victim Involves A-30, A-28 & Lt. Guddu.	<u>DEFENCE</u> Exh.1390 –Printed complaint-application as well as loss-damage analysis form of PW-201, Sattarbhai Mohammad Hussain Shaikh - Page 1 to 4. Exh.305 (at Sr. No.4) – is FIR which includes complaint of the witness at I-C.R.No.176/02.
202	1394	Samsuddin Shahbuddin Rathod	Victim Involves A-39, A-41, A-22, A-44, A-1, A-25, Lt. Guddu & Bhavani.	Prosecution Case
203	1404	Sharifabibi Iqbalbhai Shaikh	Victim Involves A-26, A-55, Lt. Bhavani, Guddu & Dalpat	<u>DEFENCE</u> Exh.1405 Application by PW-203, Sharifabibi Iqbalbhai Shaikh to SIT. Exh.389 – PM Note of the son of this witness.
204	1410	Abdul Razzak Abdul Rehman Saiyad	Victim Involves A-41 and A-20.	<u>DEFENCE</u> Exh.1412– Printed complaint-application as well as loss-damage analysis form of PW-204, Abdul Razzaq Abdul Rehman Saiyad - page 1 to 4. Exh.1426- Station Diaries (page No. 42, entry No.13) (exhibited in PW-200) Exh.1427 - Station Diaries (page No. 50, entry No.18) (exhibited in PW-200) Exh.1428 - arrest memo.
205	1434	Zarinabanu	Occurrence	Exh.544, her injury certificate,

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Naeemuddin Shaikh	Witness, involves none.	Exh.546, case papers.
206	1440	Jetunbibi Aslam Shaikh	Occurrence Witness, involves none.	Exh.364 - Injury Certificate (PW-44)
207	1449	Bashir Ahmed Mohammad Yusuf Shaikh	Occurrence Witness, involves none.	Exh.334–Injury Certificate by PW-43.
208	1453	Nazirkhan Rahimkhan Pathan	Panch	PROSECUTION Exh.1454 –Inquest panchnama of dead body of Kudratbibi Khurshidbhai. (dtd 5/3/02) Exh.1455 Panchnama of place of offence in case of Ist C.R. No. 164/02 of Naroda Police Station (dtd 7/6/02) DEFENCE Exh.1456 – application of the witness to SIT. Exh.670 – application signed at Sr.No.3. P.M.Note and Inquest of Abidali Hamidali are Exh. 393 and 394.
209	1463	Shabana Bundubhai Qureshi	Victim Involves Lt. Bhavani, Guddu & Dalpat as well as A-1, A-10, A-22, A-28, A-40, son of Jay Bhavani, A-53, A-60.	PROSECUTION Exh.619 is P.M. of sister Nasim, Exh.585 is P.M. of mother Zarina and Exh.601 is P.M. of Siddique. Exh.246, panchnama of I-Parade (identified A-54) DEFENCE Exh.1464 – application to SIT, Exh.1479– Original panchnama of loss-damage to the house of PW-209, Shabana Bundubhai Qureshi of P.S.I., DCB, Ahmedabad from 12:25 hours to 12:55 hours dated 11/05/02
210	1493	Dilipbhai Khengarbhai Chauhan	Panch Involves A-44	PROSECUTION Exh.1494 – panchnama (panchnama before PW-275-Agrawat) Exh.1495 - panch slip, BY COURT Exh.1496 - FSL Analysis Report Exh.1497 - FSL Report. Exh.1498 - FSL DNA Report
211	1504	Jaswant	Panch	Exh. 1834- Discovery Panchnama of

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
		Punamchand Chudasama	Involves A-41. (Hostile)	weapon (Sword) by accused, Manoj @ Manoj Sindhi Renumal Kukrani. (Exhibited in PW-275)
212	1507	Rukhsana Bundubhai Qureshi	Victim Involves A-60, A-22, A-31, A-1, A-10, A-61, A-40 and also Lt. Bhavani, Guddu & Dalpat.	DEFENCE Exh.1515 –Application by witness, Rukhsana Bundubhai Qureshi to the Chairman, SIT to record their statement. Note : By Court.
213	1522	Hasibkhan Achchhan Khan Pathan	Victim Involves Lt. Bhavani, Guddu as well as A-22, A-51, A-44, A-33.	DEFENCE Exh.1529 – Application by witness, Hasibbhai Achchhankhan Pathan to the Chairman, SIT to record their statement. Exh.1531–Original panchnama of loss-damage caused to the house of PW-213, Hasibkhan Achchhankhan Pathan of PSI, DCB, Ahmedabad City from 16:00 hours to 16:30 hours. Exh.1532-Certified copy of Judgement in Sessions Case No. 241/03 and 242/03.
214	1547	Saberabanu Abdul Aziz Shaikh	Victim Occurrence Witness, involves none.	Exh.370 (through PW-44), Injury certificate of this witness Exh.1945 (Wasim) and Exh.1946 (Salim) are the two PM Reports of Wasim and Salim, sons of this witness Exh.843 – (through PW-130) Dying Declaration of this witness.
215	1554	Ashok Hemrajbhai (Sharma) Pandit	Videographer of VCD	Exh.1228 – Seizure panchnama of the V.C.D. of the place of offence of I-C.R.No.100/02 of Naroda P.S. (Exhibited by PW-178) Exh.1229 – Panch Slip of muddamal article No.6. (Exhibited by PW-178) Exh.1230– Panch slip of Videography cassettes, muddamal article No.6. (Exhibited by PW-178)
216	1555	Sanjay Babubhai Bharvad	Panch	Exh.1556 – Additional Panchnama of place of offence of I-C.R.No.100/02 of Naroda P.S.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
217	1562	Salim Rahimbhai Shaikh	Victim Involves A-25, A-52 & Lt. Bhavani.	Exh.1563 – Panchnama of place of offence in I-C.R.No.176/02 of Naroda P.S.
218	1564	Abdul Rashid Rahimbhai Shaikh	Victim Involves A-52.	Prosecution Case
219	1568	Nurbanu Zakir Hussain Saiyad	Victim Involves A-56 and A-22.	Exh.252 –Original Panchnama of I-Parade of A-56 (through PW-36) Exh.1572 – Application to SIT by this witness. Exh.348 and Exh.937 are respectively P.M. of Jadi Khala, Hajrabibi and inquest of unknown female aged 35 years (Exhibited by PW-43 and 139)
220	1578	Mahendrasinh Janaktsinh Sisodiya	For Notification under Gujarat Police Act.	Exh.1579- Notification published by Police Commissioner. Exh.1580– Order of Curfew by Police Commissioner, Ahmedabad.
221	1581	Kiranpuri Gangapuri Goswami	Exh.1582, Vardhi Book	Prosecution Case
222	1589	Ranjitsinh Chuthaji Chauhan	Vardhi Book, Exh.1590 to 1593	Prosecution Case
223	1596	Gulam Mohammad Faiz Mohammad Pathan	Watchman of Uday Gas Involves None	Prosecution Case
224	1601	Chandbhai Abdul Rashid Shaikh	Victim Involves A-22 & Lt. Guddu.	Prosecution Case
225	1607	Firozbhai alias Baba Khwaja Moyuddin Shaikh	Occurrence Witness, involves none.	Prosecution Case
226	1608	Salim Allabax Shaikh	Victim Involves A-22, Lt. Guddu & Bhavani.	Exh.624 - P.M. Note of Mohammad Aiyub Allabax Shaikh (exhibited through PW-100)

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
227	1614	Zuberkhan Islamkhan Pathan	Victim Involves A-37, A-22, A-44 & A-33.	DEFENCE Exh.1616 – Printed complaint-application as well as loss-damage/ analysis form of PW-227, Zulerkhan Islamkhan Pathan (page 1 to 4) by pursis. BY COURT Exh.1617 – Both kinds of signature of the witness taken by the Court. (Specimen Signature of PW-227)
228	1621	Javed Ismail Shaikh	Victim Involves A-18, A-22, A-28, Lt. Guddu & Bhavani.	Exh.1623 – Application by this witness, Javed Ismail Shaikh to SIT. Exh.1630 – School leaving certificate of Javed Ismail Shaikh, PW-228.
229	1628	Sayrabanu Khwaja Hussain Shaikh	Victim Involves A-22, 26, 41 & Lt. Guddu.	Prosecution Case
230	1635	Mohammad Rafiq Abdul Karim Shaikh	Victim Involves A-22, A-41 & Lt. Guddu.	Prosecution Case
231	1637	Zulekhabibi Mohammad Aiyub Shaikh	Victim Involves A-22, Lt. Guddu & Bhavani.	Exh.1638 - Application by this witness, Zulekhabibi Mohammad Aiyub Shaikh to SIT dtd. 19/04/08. Exh.1639 - Application by this witness, Zulekhabibi Mohmmad Aiyub Shaikh SIT dtd.08/05/08.
232	1643	Shahid Hussain Abdul Gafur Shaikh	Victim Involves A-33.	Prosecution Case
233	1644	Rajabax Rajesh Nabisha Saiyad	Victim Involves A-41 & 44.	Prosecution Case
234	1652	Mohammad Yunus Bashir Ahmed Shaikh	Victim Involves A-44 and Lt. Bhavani.	Exh.2305-Application by this witness to SIT (Exhibited by PW-327)
235	1654	Nadimuddin Sharifuddin Saiyad	Victim Involves A-47.	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
236	1662	Siddiqbhai Allabax Mansuri	Victim Involves A-24, A-20, A-17, A-2, A-44, A-62 and A-37.	Exh.1663 – Application by this PW-236, Siddiqbhai Allabax Mansuri to SIT.
237	1669	Haidarali Nazafali Mirza	Victim Involves A-38.	Exh.1868 – Seizure panchnama of Mobile Phone of Motorola company presented by P.I. Shri S.M. Parmar in I-C.R.No. 238/02 (Exhibited in PW-277)
238	1673	Nasrin Mohammad Rafiq Shaikh	Victim Involves A-4, A-22, A-26 & A-35.	Prosecution Case
239	1674	Gulam Yasin Nurbhai Qureshi	Victim Involves A-22.	Prosecution Case
240	1679	Mohammad Khurshid Mohammad Nasim Shaikh	Occurrence Witness, involves none.	Prosecution Case
241	1681	Bipin Jayantilal Mehta	V.S.Hospital Police Table	Exh.1682 – Page No.128 of Vardhi Book dated 01/03/2002 for entry of this PW-241. Exh.1683 – Page No.129 of Vardhi Book dated 01/03/2002 for entry of five patients of this PW-241. Exh.1684 – Page No.129, 130 of Vardhi Book dated 01/03/2002 for entry of eight patients. Exh.1685 – Last portion of page No. 130 of Vardhi Book dated 01/03/2002 for entry for patient, Raziyabanu. Exh.1686 – Page No.124 & 125 of Vardhi Book dated 01/03/2002 for entry.
242	1690	Mohammad Salim Ahmedbhai Shaikh	Victim Involves A-10, A-22 and Lt. Guddu.	Prosecution Case
243	1694	Shabbirali Nivasali Ansari	Victim Involves A-22, A-44, A-17, Lt. Guddu	Exh.1695 - Application by this PW-243 to SIT.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			& Bhavani.	
244	1703	Mayuddin Imamuddin Shaikh	Victim Involves A-18.	Exh.1704 – Application by this witness to SIT. Exh.1705 – Printed complaint and Loss & Damage application of this PW.
245	1712	Nadim Mohammadali Saiyad	Victim Involves A-38.	Prosecution Case
246	1713	Nurjahan Abdul Kadir Shaikh	Occurrence Witness, involves none.	Prosecution Case
247	1717	Afrozbanu Mohammad Razzak Ansari	Victim Involves A-22 and Lt. Bhavani.	Exh.1945 and Exh.1946 are P.M. Notes of Wasim Abdul Aziz Shaikh and Salim Abdul Aziz Shaikh, sons of Naimuddin. (Exhibited by PW-285)
248	1722	Mohammad Yunus Abdulbhai Chaudhari	Victim Involves Lt. Bhavani & Guddu.	Exh.1724 - Application by this PW-248 to SIT.
249	1725	Salaluddin Sharifuddin Saiyad	Victim Involves A-44, Bipin and A-33, Babu Vanzara.	Prosecution Case
250	1729	Nasimbanu Khwajahussain Shaikh	Victim Involves Raju Chhara & A-23.	Prosecution Case
251	1730	Inayat Abdul Rahim Saiyad	Occurrence Witness, involves none.	Prosecution Case
252	1737	Jayesh Vrajlal Makwana	Shopkeeper for Ashok Sindhi. Involves A-38. (Hostile)	Prosecution Case
253	1738	Balwantsinh Kalusinh Jadeja	Shopkeeper for Ashok Sindhi. Involves A-	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			38. (Hostile)	
254	1742	Mohammad Azharuddin Mohammad Yunus Shaikh	Occurrence Witness, involves none.	Prosecution Case
255	1743	Mohammad Khalid Saiyad Ali Saiyad	Occurrence Witness, involves none.	Exh.1744 – Application by this PW-255 to SIT.
256	1748	Ajitkumar Dahyalal Shah	Panch.	Exh.1749- Panchnama of place of offence in I-C.R.No.100/02 of Naroda Police Station (in four parts) (Panch witness of panchnama in four parts dated 01/03/02 Exh.1749 and another two panchnamas of damages viz. both dated 14/03/02 Exh.2036 and 2037.)
257	1754	Mohammad Riyaz Fasiyuddin Shaikh	Victim Involves A-22, Lt. Guddu & Bhavani.	Prosecution Case
258	1755	Mohammad Usman Mehmoodbhai Shaikh	Victim Involves A-41 & A-44.	Prosecution Case
259	1761	Hajrabibi Abdulsamad Shaikh	Occurrence Witness, involves none.	Prosecution Case
260	1762	Rasulali Ajmuddin Shaikh	Victim Involves, A-22, A-44, Lt. Guddu & Bhavani.	Prosecution Case
261	1766	Mariyambibi Hasanbhai Saiyad	Victim Involves A-2, 22, A-26, Lt. Guddu & Bhavani.	Prosecution Case
262	1770	Vinubhai Khemabhai Delvadiya (In the year, 2002 his surname was Shri Solanki)	Complainant Involves A-19, A-18, A-43, A-24, A-20.	<u>PROSECUTION</u> Exh.1772 - Gujarat Government Gazette where new name of this PW-262, Vinubhai Khemabhai Delvadiya is shown. Exh.1773- Complaint of this PW, P.S.I., Mr.V.K.Solanki (Delvadiya)

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				DEFENCE Exh.1774- Card of Shanti Samiti of A-20 issued by Naroda P.S.
263	1775	Chandrakant Kantilal Trivedi	Production witness for M.M.C.	Exh.1776/1 – Record of C-Summary alongwith I-C.R.No.111/02 of Naroda P.S. Exh.1776/2 – Record of C-Summary alongwith I-C.R.No.117/02 of Naroda P.S. Exh.1776/3 – Record of C-Summary alongwith I-C.R.No.127/02 of Naroda P.S. Exh.1776/4 – Record of C-Summary alongwith I-C.R.No.130/02 of Naroda P.S. Exh.1776/5 – Record of C-Summary alongwith I-C.R.No.161/02 of Naroda P.S. Exh.1776/6 – Record of C-Summary alongwith I-C.R.No.162/02 of Naroda P.S. Exh.1776/7 – Record of C-Summary alongwith I-C.R.No.163/02 of Naroda P.S. Exh.1776/8 – Record of C-Summary alongwith I-C.R.No.164/02 of Naroda P.S. Exh.1776/9 – Record of C-Summary alongwith I-C.R.No.176/02 of Naroda P.S. Exh.1776/10 – Record of C-Summary alongwith I-C.R.No.177/02 of Naroda P.S. Exh.1776/11 – Record of C-Summary alongwith I-C.R.No.179/02 of Naroda P.S. Exh.1776/12 – Record of C-Summary alongwith I-C.R.No.180/02 of Naroda P.S. Exh.1776/13 – Record of C-Summary alongwith I-C.R.No.181/02 of Naroda

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				P.S. Exh.1776/14 – Record of C-Summary alongwith I-C.R.No.182/02 of Naroda P.S. Exh.1776/15 – Record of C-Summary alongwith I-C.R No.183/02 of Naroda P.S. Exh.1776/16 – Record of C-Summary alongwith I-C.R.No.184/02 of Naroda P.S. Exh.1776/17 – Record of C-Summary alongwith I-C.R.No.185/02 of Naroda P.S. Exh.1776/18 – Record of C-Summary alongwith I-C.R.No.187/02 of Naroda P.S. Exh.1776/19 – Record of C-Summary alongwith I-C.R.No.188/02 of Naroda P.S. Exh.1776/20 – Record of C-Summary alongwith I-C.R.No.204/02 of Naroda P.S. Exh.1776/21 – Record of C-Summary alongwith I-C.R.No.208/02 of Naroda P.S. Exh.1776/22 – Record of C-Summary alongwith I-C.R.No.210/02 of Naroda P.S. Exh.1776/23 – Record of C-Summary alongwith I-C.R.No.238/02 of Naroda P.S. Exh.1776/24 – Record of C-Summary alongwith I-C.R.No.267/02 of Naroda P.S.
264	1778	Kirankumar Parshottamdas Makwana	Saijpur Police Chowki Involves A-27, A-1 & A-3.	Prosecution Case
265	1781	Sajjansinh Jashwantsinh Puvar	A.S.I., Krishnanagar Police	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			Chowki. Involves A-27 & A-1.	
266	1785	Parbatsing Vajesing Thakor	Wireless Operator, Naroda – I Involves A-24 & A-18.	DEFENCE Exh.1786 – Log Book of Naroda -1 page No.915 to 927
267	1789	Manubhai Madhabhai Rathod	Patrolling Duty, P.C., K. Chowki. Involves A-1, A-27 & A-3.	Prosecution Case
268	1795	Virchandbhai Morarbhai Rathod	P.S.O. Naroda Police Station.	PROSECUTION Exh.1796 – Copy of Station Diary of I-C.R. No.99/02 & 100/02. Exh.1797 – Report as per Section 157 of Cr.P.C. for I-C.R.No.100/02. Exh.1798 – Original Vardhi Book page No.161 to 170 (both sides) of Naroda P.S. from 28/02/2002 to 05/03/2002. (Total 22 pages of certified copy and Total 11 pages of typed copy) DEFENCE Exh.1799 – Vardhi Register Entry No.12 of page No.1096.
269	1800	Mahernos Faramroj Dastur	Fire Brigade	Exh.1801 – Certified copy of page No.117 to 147 (both sides) of Occurrence Book No.7 as well as page No.1 to 9 (both sides) of Occurrence Book No.8 of A.M.C., alongwith forwarding letter. (Total 90 pages).
270	1805	Shankarsinh Mangalsinh Parmar	Police Comm. Office (Motorola handed over)	Exh.1868 – Seizure panchnama of Mobile Phone of Motorola company presented by P.I. Shri S.M.Parmar in I-C.R.No.238/02. (Exhibited in PW-277)
271	1806	Hiralal Mangaldas Kanojiya	(Hostile Eyewitness) Punam Laundry Involves A-50, Badal	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			Chhara.	
272	1809	Dr.Saranjitsinh Karamsinh Jagdev	Maitri Hospital, Treating Doctor	Exh.1810 (whole page) – Certified copy of Patient Register of Maitri Hospital, Kubernagar, Ahmedabad. (for A-32)
273	1812	Pankajbhai Pradhyuman Bhatt	S.T. Admn. Officer Involves A-49, A-59 & A-57.	Exh.1814 – Copy of Attendance Register of Accounts Branch of GSRTC Exh.1815 – Copy of Attendance Register of Accounts Branch of GSRTC Exh.1816 – Copy of Attendance Register of Accounts Branch of GSRTC. Exh.1817 – Page No.48 of Diesel Stock & Consumption Register of GSRTC. Exh.1818 – True copy of page No.4 of Stock Register of Engine Oil of GSRTC from 27/02/2002 to 01/03/2002. Exh.1819 – True copy of page No.10 of the Stock Register of Furnace Oil of GSRTC from 27/02/2002 to 01/03/2002.
274	1824	Kerman Khurshid Mysorewala	I.O. No.1. Involves A-3, A-18, A-19, A-20 & A-24.	<u>PROSECUTION</u> Exh.1825 – Bandobast of police staff in Naroda P.S.S on 27/02/2002 and 28/02/2002. (total 6 pages) <u>Referred in deposition and during investigation did:</u> Exh.194- Inquest of two unknown persons. Exh.192 – Inquest of unknown boy aged about 10 years Exh.203 – Inquest of Sahidabanu Ibrahimbhai Shaikh Exh.402 – Inquest of one unknown male. Exh.205 – Inquest of Inquest panchnama of one unknown male aged about 40 years, one unknown female aged about 30 years and one human remains. Exh.937 – Inquest of one unknown female aged about 35 years. Exh.214 – Inquest of Asif Shabbirbhai Exh.212 – Inquest of Mehmoodbhai Khurshid Shaikh Exh.224 – Inquest of Sarmuddin

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Khalid Noor Mohammad. Exh.1454 – Inquest of Kudratbibi Khurshidbhai. Exh.221 – Inquest of Supriya (Sofiyabanu) Abdul Marjid Shaikh. Exh.1749 (Part 1 to 4) – Panchnama of the site of the offence. Exh.2060, 2061 and 2063, 2065 to 2068 and Exh.764 are all Yadis & permission for various Inquest panchnamas. (by Mr. L.K. Katara) Exh.662, 2064, 192, 205, 2069 to 2071 are all inquest panchnamas (by Mr. L.K. Katara) Exh.1333 – Inquest panchnama of the dead bodies of one unknown male child aged about 10 years and two unknown females.(only referred) Exh.2062 – Inquest panchnama of deceased, Sofiyabanu Majidbhai Shaikh (only referred), Exh.2064 – Inquest panchnama of Zubedabanu Shabbir Ahmed Shaikh. Exh.2075 – Inquest panchnama of Sakina Mehmoodbhai. <u>BY COURT :</u> Exh.2083 - Forwarding Letter of Dy.S.P., Mr.K.K. Mysorewala. Exh.2084 - Copy of F.I.R. of I-C.R.No. 96/02 of Naroda P.S. Exh.2085 - Copy of F.I.R. of I-C.R.No. 97/02 of Naroda P.S.
275	1833	Hareshkumar Prafulchandra Agravat	Assignee Officer of I.O. 3.	Exh.1834 – Discovery Panchnama of weapon (Sword) by accused, Manoj @ Manoj Sindhi Renumal Kukrani. Exh.1835-Yadi to issue P.M. Note of deceased, Asif Sarmuddin Shaikh, P.M.Note bearing No.518/02. Exh.1836-Yadi to issue P.M.Note of deceased, Farhana D/o. Ayub Ladesha Qureshi, P.M. Note bearing No.496/02. Exh.1837- Yadi to issue P.M.Note of deceased, Shahjahan, w/o. Sarmuddin Shaikh, P.M. Note bearing No.514/02. Exh.1838-Yadi to issue P.M.Note of deceased, Shamsad, S/o. Rehmanbhai Saiyad, P.M. Note bearing No.521/02. Exh.1839-Yadi to issue P.M.Note of

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				deceased, Rukhsana, D/o. Rehmanbhai Saiyad, P.M. Note bearing No.527/02. Exh.1840- Yadi giving P.M. Note of deceased, Rafiq Sarmuddin Shaikh, P.M.Note bearing No.513/02. Exh.1841- Yadi to issue P.M.Note of deceased, Hasanali Mohbeali Mirza P.M.Note bearing No.530/02. Exh.1842- Yadi to issue P.M.Note of deceased, Fatimabibi, Wife of Ganibhai Shaikh P.M. Note bearing No.609/02. Exh.1843-Yadi to issue P.M. Note of deceased, Irfan Inayat Saiyad, P.M.Note bearing No. 489/02. Exh.1844-Yadi to issue P.M.Note of deceased, Salman Inayat Saiyad, P.M.Note bearing No.493/02. Exh.1845- Yadi to issue P.M. Note of deceased, Ismailbhai Sarmuddin Shaikh, P.M.Note bearing No.567/02. Exh.1846-Yadi to issue P.M.Note of deceased, Noorjahan, daughter of Kabirali Shaikh, P.M. Note bearing No.598/02. Exh.1847-Yadi to issue P.M.Note of deceased, Hazrabanu @ Jadi Khala Abdul Rahim Saiyad, P.M. Note bearing No.619/02. Exh.1848-Yadi to issue P.M.Note of deceased, Adamali Mohammadbhai Shaikh, P.M. Note bearing No. 550/02. Exh.1849-Yadi to issue P.M.Note of deceased, Nilofarbanu, daughter of Ibrahimbhai Mansuri, P.M. Note bearing No. 542/02. Exh.1850-Yadi to issue P.M.Note of deceased, Mohammad Shahrukh Nazir Hussain Shaikh, P.M.Note bearing No.592/02. Exh.1851 – the Arrest Memo of Ashok Sindhi (A-38)
276	1854	Pruthvisinh Udesinh Solanki	Assignee Officer, P.S.I., Krishnanagar Chowki	Exh.1855 – Yadi to draw Inquest Panchnama of an unknown female aged about 35 years. Exh.1856 – Panchnama of place of offence in I-C.R. No.179/02 of Naroda Police Station. Exh.143 is the panchnama of the scene of offence viz. residence of Mehmoodbhai Abbasbhai Bagdadi (Panchnama, Exh.143 of residence of

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				PW-1 before this witness.)
277	1867	Madansinh Takhatsinh Rana	Supervising Officer for I.O. Involves A-19 & A-18.	PROSECUTION Exh.1868- Seizure panchnama of Mobile Phone of Motorola company presented by P.I. Shri S.M.Parmar in I-C.R. No. 238/02. Exh.880 – complaint filed by PW-135 Exh.317 – FIR of Naroda I-C.R.No. 238/02, Hussainabanu Azgarkhan Pathan (PW-135) (only referred) DEFENCE Exh.888 - Panchnama of place of offence and seizure of burnt ashes & control sample mud from that place in I-C.R.No.238/02 of Naroda Police Station.
278	1886	Rameshkumar Bhavanishank-ar Joshi	Assignee Officer of I.O. No.3	Exh.1902 Statement of Bachalal Babubhai Chauhan (only for the name of the witness) Exh.1903 -Xerox statement of Pappubhai Sabirbhai for signature only.
279	1907	Bhanjibhai Jivabhai Sadavarti	Assignee Officer of I.O. No.3	Exh.1498 (Collectively exhibited) – Various Yadis and receipts to F.S.L. for D.N.A. profile of relatives.
280	1915	Bhanushankar Chhaganlal Joshi	Assignee Officer of I.O. No.3	Prosecution Case
281	1918	Dhananjaysinh Surendrasinh Vaghela	Assignee Officer of I.O. No.3	Exh.1455 – Panchnama of place of offence in I-C.R.No.164/02 of Naroda Police Station (panchnama of residence of Kamrunisha Muradali Shaikh- PW-56)
282	1922	Kalubhai Sartanbhai Desai	Assignee Officer of I.O. No.3	Exh.1563 Panchnama of place of offence in I-C.R.No.176/02 of Naroda P.S. (panchnama of the residence of Mohammad Farook Kasambhai Saiyad, PW-55)
283	1931	Jagdishsinh Temubha Chudasama	Assignee Officer of I.O. No.3	Prosecution Case
284	1932	Tarunkumar Amrutlal Barot	Assignee Officer of I.O. No.3 Involves A-41, A-43 & A-	Prosecution Case

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			42.	
285	1941	Dr.Jayantilal Virjibhai Satapara	P.M. independent-ly as well as in panel	Exh.1942 - P.M.Note of unknown female aged 40 years. Exh.1943 - P.M.Note of unknown female aged 10 years. Exh..1944 - Intimation of Police Surgeon for non-finding of case papers of P.M. Note No. 543/02. Exh.1945 - P.M.Note of unknown male aged 10 years. Exh.1946 - P.M.Note of unknown male aged 5 to 7 years. Exh.1947 - P.M.Note of unknown female aged 5 years. Exh.1949 - P.M.Note of unknown male aged 10 years. Exh.1951 - P.M.Note of unknown male aged 10 years. Exh.1952 - P.M.Note of unknown male aged 32 years. Exh.1953 - P.M.Note of unknown male aged 10 years. Exh.1954 - P.M.Note of unknown female aged 10 years. Exh.1961 - P.M.Note of unknown male child aged 2 years. Exh.1962 - P.M.Note of unknown female aged 40 years. Exh.1963 - P.M.Note of unknown female aged 30 years. Exh.1964 - P.M.Note of unknown male aged 15 years. Exh.1965 - Injury certificate of Mohammad Maru Raufalikhan Pathan (PW-191) Exh.1966 - Injury certificate of Shahrukh Shabbir (Kabirali Adambhai Shaikh) (through PW-181) Exh.1968 - P.M.Note of unknown male (As per police yadi - Ramsurat Babubhai Varma) Exh.1969 – Yadi to issue P.M. Note of deceased,Ramsurat Babubhai Varma, P.M. Note bearing No.525/02.
286	1974	Dr.Yogesh Anjanikumar Gupta	V.S.Hospital	Exh.1976 - Case papers including Injury Certificate of Mustaq Razzak Kaladiya (through PW-105) of V.S. Hospital (page No.1 to 84 and 8 x-ray plates)
287	1977	Dr.Aman Manoharlal Gupta	V.S.Hospital	Exh.1979 – Case papers and injury certificate of Mohammad Khalid Saiyadali, PW-255 (page No.1 to 96)

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
288	1984	Dr.Pranay Nagindas Patel	V.S.Hospital	Exh.285 – Injury Certificate of Ahmed Badshah (PW-154) (exhibited in PW-39) Exh.286 – Case papers of Ahmed Badshah. (PW-154) (page No. 1 to 105) (exhibited in PW-39)
289	1985	Dr.Rajesh Dalpatbhai Patel	Production Witness	Exh.1987- Case papers and Injury Certificate of Abdul Majid Saiyad (Page No.1 to 8 and 1 x-ray plate)
290	1988	Dr.Dinesh Savjibhai Chandana	Production Witness	Prosecution Case
291	1995	Mukundsinh Balvantsinh Raj	Assignee Officer of I.O.- 3	Exh.931 – Panchnama of place of offence in I-C.R.No.177/02 of Naroda Police Station. (exhibited in PW-138)
292	2001	Rajeshkumar Chinubhai Pathak	Assignee Office of I.O.-2	Prosecution Case
293	2010	Bhailalbhai Tulsibhai Karoliya	Assignee Office of I.O.-3	Prosecution Case
294	2014	Pravinbhai Badiyabhai Gondiya	Supervising Officer of I.O. 1	Prosecution Case
295	2028	Bhupendra Chandidan Gadhavi	Assignee Officer of I.O. 3	Prosecution Case
296	2035	Jaswantsinh Vasantsinh Surela	Assignee Officer of I.O. 1 (Panchnama of site of offence)	<u>PROSECUTION</u> Exh.1749 – Panchnama in part-I to part-IV in all one continuous panchnama in four parts. Exh.2036 – Panchnama of place of offence in case of Ist C.R. No. 117/02 of Naroda Police Station Exh.2037 - Panchnama of place of offence in case of Ist C.R. No. 130/02 of Naroda Police Station Exh.2038 - Panchnama of place of offence in case of Ist C.R. No. 162/02 of Naroda Police Station Exh.2039 – Panchnama of place of offence in case of Ist C.R. No. 184/02 of Naroda Police Station Exh.2040 – Panchnama of place of offence in case of Ist C.R. No. 185/02 of Naroda Police Station. Exh.2041- Identification panchnama of dead body of Zarinabanu Bundubhai

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				DEFENCE Exh.384 is a panchnama for I-CR No. 161/02 for the property of Sufiyamiya Yakubmiya Shaikh, PW-45 (Exhibited in PW-45)
297	2045	Pruthvisinh Bhavanisinh Makwana	P.S.I. of Saijpur Police Chowki (First I.O.)	Exh.2046 - Panchnama of place of offence in case of I- C.R. No. 115/02 of Naroda PS. Exh.2047- Panchnama of place of offence in case of I- C.R. No. 129/02 of Naroda PS. Exh.2048- Panchnama of place of offence in case of I- C.R. No. 153/02 of Naroda PS.
298	2076	Hanubha Bhikhubha Gohil	Assignee Officer of I.O. 3	Prosecution Case
299	2081	Dilipsinh Prabhatsinh Zala (B.No. 5686)	Head Constable of Crime Branch (I.O. 3)	Exh.2083 - Forwarding Letter of Dy. S.P., Mr.K.K.Mysorewala. (only referred) Exh.2084 - Copy of F.I.R. of I-C.R. No.96/02 of Naroda P.S. (only referred) Exh.2085 - Copy of F.I.R. of I-C.R. No.97/02 of Naroda P.S. (only referred)
300	2089	Nisarmohamm-ad Sultankhan Malek	Assignee Officer of I.O. 3.	Prosecution Case
301	2091	Devendragiri Himmatgiri Goswami	Assignee Officer of I.O. 3	Prosecution Case
302	2096	Dilipbhai Arjunbhai Rathod	Assignee Officer of I.O. 3	Prosecution Case
303	2106	Prakash Somalal Shah	Home Deptt. Involves A-1, A-2,A-3,A-4, A-5,A-6,A-7, A-8, A-9,A-10, A-11, A-12, A-13,A-14,A-15, A-16,A-17, A-18,A-19,A-20,A-21,A-22.	Exh.2107 Sanction by Government of Gujarat for the prosecution of Accused No.1 to 22. Exh.2108-Letter written to Home Department for sanction. Exh.2109-Letter written to Secretary, Home Department for sanction. Exh.2110-Letter written to Secretary, Home Department for sanction.
304	2111	Shekhawat Mahavarshiya Shayar	Home Deptt. Involves A-	Exh.2112 – Sanction to prosecute.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			23, A-24,A-25, A-26, A-27,A-28, A-29, A-30 and Lt. Guddu.	
305	2114	Purushottam Nathabhai Patel	Home Deptt. Involves A-33 (Exh.2115), A-45 to A-59 (Exh.2116), A-31 (Exh.2117)	Exh.2115 - Sanction to prosecute. Exh.2116 - Sanction to prosecute. Exh.2117 - Sanction to prosecute.
306	2118	Rajesh Vitthalbhai Bhagat	Home Deptt. Involves A-37, A-39, A-40 (Exh. 2119), A-41 to A-44 (Exh.2120)	Exh.2119- Sanction to prosecute. Exh.2120 - Sanction by Government of Gujarat for the prosecution of Accused No.41 to 44
307	2127	Sukhdevsinh Sardarsinh Chudasama	I.O. 3.	Exh.2128- Order of Police Commissioner,Ahmedabad to include 25 I-C.R.s in Naroda Police Station I-C.R. No.100/02. Exh.2129- Discovery Panchnama of container (kerbo) of kerosene from the accused, Ratilal @ Jaybhavani (deceased). Exh.2130 - Discovery Panchnama of seizure of weapon scythe (dhariya) by deceased accused- Mukesh @ Guddu Jivanlal Chhara.
308	2182	Rahul Nanheshwar Sharma	C.D. of Call Details	Prosecution Case
309	2183	Surendrasinh Dasodasinh Brar	Home Deptt. Involves A-34 to 37, A-60 to 62, A-31.	Exh.2184- Sanction to prosecute. Exh.2185- Sanction to prosecute. Exh.2186- Order to reject sanction.
310	2188	Deepakbhai Revabhai Parmar	Home Deptt.	Exh.2189 – Letter of PW-327 to Vidhan Sabha. Exh.2190 –Details given by Gujarat Vidhan Sabha. Exh.2218 -Pursis of Dy.S.O. to

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				produce ten books for Session of Legislative Assembly Exh.2219 - Letter of Mr.M.M.Parikh, Under Secretary, Legislative Assembly.
311	2191	Jobdas Suryanarayan Gedam	Mobile Phone Call Details (Computer) Involves A-37, A-18, A-62, A-24 and A-44.	Exh.2192- Letter for call details and print out of Mobile Phone of accused (1) Babu Bajrangi (2) Mayaben Kodnani (3) Raju Chaumal (4) Kishan Korani (5) Kirpalsinh (6) Bipin Panchal from 27/02/2002 to 04/03/2002. Exh.2193- Print out of analysis and call details of mobile phone No. 98250 20333 of the accused, Babu Bajrangi (Total 38 pages) Exh.2194- Print out of analysis and call details of mobile phone No. 98250 06729 of the accused, Mayaben Kodnani (A-37) (Total 44 pages) Exh.2195- Print out of analysis and call details of mobile phone No.079-2830678 of the accused, Raju Chaumal (A-24) (Total 6 pages) Exh.2196- Print out of analysis and call details of mobile phone No. 079-2818316 of the accused, Kishan Korani (A-20) (Total 6 pages) Exh.2197- Print out of analysis and call details of mobile phone No.98250 74044 and Residence Telephone No.22822082 of the accused, Kirpalsinh (A-62) (Total 19 pages) Exh.2198- Print out of analysis and call details of mobile phone No.98240 85556 of the accused, Bipin Panchal (A-44) (Total 18 pages)
312	2200	Ghanshyamsinh Prabhatsinh Vaghela	N.V.P.- D.Staff (Receipt for C.D.) Involves A-18, A-22, A-21.	Exh.2201-Original Yadi by I.O. to Navrangpura P.S. for muddamal receipt of seal packed CD of the voice samples of the accused. Exh.2202- Muddamal receipt of the sealed pack CD of the voice samples

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				of the accused (Navrangpura Police Station)
313	2207	Harishbhai Ranchhodlal Muliyana	I.O. - 5 Involves A-33.	Exh.240 – Panchnama of I-Parade of A-33.
314	2212	Bhagirath Manilal Pandya	All India Radio Station Involves A-18, 22, 21 and other accused whose names have been stated.	Exh.2213 - Letter of Station Director, Akashwani, Ahmedabad to Competent Officer for voice samples of the accused. Exh.2214 - Letter to I.O. by Station Director, Akashwani, Ahmedabad for voice samples of the accused. Exh.2215 - Order for permission for sample recording from Prasar Bharati. Exh.2216 - Order for permission for sample recording from Prasar Bharati
315	2220	Manubhai Jashbhai Patel	D.I.L.R. Surveyor	Exh.2221 and 2222 – Two maps of the place of offence. Exh.2223 - Forwarding letter of DILR to send the maps of place of offence. Exh.2224 - Yadi written to D.I.L.R., Ahmedabad by I.O.
316	2226	Dhiren Jayantilal Lariyani	Vodafone Mobile	Exh.2227 - Letter by I.O. to CellForce for mobile call details.
317	2234	Girishkumar Laxmanbhai Singhal	I.O. - 4	Prosecution Case
318	2240	Pravinsinh Laxmansinh Mal	I.O. of Naroda Gam Involves A-37, A-18, A-44, A-24, A-62.	Exh.2241 - Letter of I.O. Mr. Mal to I.O. of this case to send C.D. of Mobile Call Details. Exh.2242 (Joint) - Original letter from IO of Naroda I-CR No.98/02 to IO of Naroda I-CR No.100/02 while sending the certified copy of analysis report of FSL, Gandhinagar of the C.D. of Mobile/Land line telephones and 11 pages of FSL Report. Exh.2243 – Document of page No.2795 of charge-sheet in S.C.No. 270/09 (letter written by P.L. Mal to V.V.Chaudhary , IO Sit.) Exh.2244 – Document of page No.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				2719/1 to 2791/12 of charge-sheet in S.C.No. 270/09 (Mobile phone details of accused No.37, Mobile No. 9825006729)
319	2255	Pushpaben Jeevabhai Ninama	Production witness (Court Staff)	- - - - -
320	2257	Nirmalsinh Sevasinh Raju	C.B.I. Involves A-18, A-21, A-22.	Exh.2258 – Letter of C.B.I. to F.S.L., Jaipur. Exh.2259 – Receipt, analysis report (page 1 to 138) of F.S.L. Jaipur.
321	2262	Ashwinkumar Anilkumar Shah	Vodafone	Prosecution Case
322	2265	Ashish Sureshchandra Khetan	Tahelka Involves A-18, A-21, A-22.	Exh.2266 :- list of documents (three transcripts) Exh.2273 – Letter of Tehelka Magazine for appointment of Mr. Ashish Khetan.
323	2274	Dr.Shailendra Ramkishor Jha	F.S.L.	Exh.2275 – Receipt of FSL, Jaipur. Exh.2276- Letter of FSL, Jaipur to SIT with FSL Report. Exh.2277 - Forwarding letter of sending sealed C.D. of voice sample for analysis report to F.S.L., Jaipur (Rajasthan)
324	2279	Nasimbanu Kalimuddin Qureshi	Relative of Victim, Occurrence Witness, involves none.	Prosecution Case
325	2280	Sayrabibi Ayubkadar Shaikh	Relative of Victim, Occurrence Witness, involves none.	Exh.2282 -Burial receipt issued by Julaiwada Masjidi Committee of deceased Abdulkadar Abdulrasul Anuri
326	2283	Zubaidabanu Abdulla Shaikh	Relative of Victim Involves Lt. Bhavani & Guddu.	Prosecution Case
327	2287	Vinaybhai Vanarbhai Chaudhari	I.O. - 6 (SIT) Involves A-35 (dead), A-31, 32, 34,	<u>PROSECUTION</u> Exh.2288- Yadi to issue P.M.Note of deceased (1) Akram Mohammad Harun Shaikh (2) Gosiyabanu Mohammad Harun Shaikh, P.M.Note

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
			35, 36, 37, 45, 46, 47, 48, 49, 50, 51 to 62.	bearing No.512/02, 518/02, 534/02, 547/02, 565/02, 577/02. Exh.2289- Application by Khwajahussain Mohammadhussain Shaikh [Dropped PW (NO.204)] to SIT. Exh.2290- Application by PW-142, Jannatbanu Kallubhai Shaikh to SIT. Exh.2291- Application by PW-229, Sayrabanu Khwajahussain Shaikh to SIT. Exh.2292- Application by PW-166, Shahinbanu Mohammadhussain Qureshi to SIT. Exh.2293- Application by PW-326, Zubedabanu Abudlla Shaikh to SIT. Exh.2294- Application by Fatimabibi Khwajahussain Shaikh [Dropped PW No.70] to SIT. Exh.2295- Application by Hussain Hamidalikhan Pathan [Dropped PW No.145] to SIT. Exh.2296- Application by Muzafarbeg Bahadurbeg Mirza [Dropped PW No.88] to SIT. Exh.2297- Application by PW-193, Ibrahimbhai Hasanbhai Shaikh to SIT. Exh.2298- Application by PW-179, Nasimbanu Abdulrehman Shaikh to SIT. Exh.2299- Application by PW-138, Mohammadbhai Abdulhamid Shaikh to SIT. Exh.2300- Application by Mumtazbanu Rahematulla Shaikh [Dropped Witness] to SIT. Exh.2301- Application by Farukbhai Fajrubhai Shaikh [Dropped PW No.81] to SIT. Exh.2302- Application by PW-199,

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Noor Mohammad Nazir Mohammad to SIT. Exh.2303- Application by PW-324, Nasimbanu Kalimuddin Qureshi to SIT. Exh.2304- Application by Mohammad Saeed Abdulmajid Khadkhad [Died as per report Exh.495] to SIT. Exh.2305- Application by PW-234, Mohammad Yunus Bashir Ahmed Shaikh to SIT. Exh.2306- Application by PW-175, Yakubali Kasamali Saiyad to SIT. Exh.2307- Application by PW-41, Allauddin Adambhai Mansuri to SIT. Exh.2308- Application by Yusufbhai Daudbhai Mansuri [Dropped PW-(No. 170)] to SIT. Exh. 2309- Application by Khillubhai Gafurbhai Sidiqqui (Maniyar) [Died as per report Exh.697] to SIT. Exh.2310- Application by PW-324, Nasimbanu Kalimuddin Qureshi to SIT. Exh.2311- Application by PW-107, Mohamadbhai Kalubhai Khalifa to SIT. Exh.2312- Application by PW-201, Sattarbhai Mohammadhussain Shaikh to SIT. EXh.2313- Application by Akhtarali Shahdulla Saiyad [Dropped PW-(No. 147)] to SIT. Exh.2314- Application by Kalumiya Motimiya Chauhan [Died as per report Exh.697] to SIT. Exh.2315- Application by PW-177, Isratjaha Parvezhussain to SIT. Exh.2316- Application by PW-245, Nadim Mohammadali Saiyad to SIT.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Exh.2319- Letter of SIT to Director, Akashwani for taking voice samples of the accused. Exh.2320-Report of Police Constable, Rajesh Sharma, Buckle No.3490 to I.O. Exh.2321- Letter of PI SIT to Dy.S.P. Crime Branch, Ahmedabad City for taking voice samples of accused. Exh.2322- Letter of PW 327 to Chief Officer, Danapith Fire Station, Ahmedabad. Exh.2323- Letter of PW-327 to Chief Officer, Danapith Fire Station, Ahmedabad. Exh.2324- Letter of Add. Chief Fire Officer to PW-327. Exh.2330- Copy of Fax message to PW-327. Exh.2331- The order by SIT to PW-327, Mr.V.V. Chaudhari. Exh.2332- Notification issued by Home Deptt. Gujarat State for constitution of SIT. Exh.2333- Charge-sheet in S.C.No. 242/09 (Page No. 7 to 45) from the record of Trial Court. Exh.2334- Charge-sheet in S.C.No. 243/09 (Page No. 7 to 45) from the record of Trial Court. Exh.2341- Certified copy of Burial Receipt of Julaivada Masjidi Committee of deceased, Kausharbanu Khalidbhai Shaikh from page No.711 of pursis Exh.767 alongwith charge-sheet. EXh.2342- Certified copy of Page No.1 to 44 received from BSNL for land line telephone No. 22830678. Exh.2343- Certified copy of Page No.1 to 44 received from BSNL for land line telephone No. 02818316.

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Exh.2344- One C.D. as well as album photograph containing total 40 photographs of place of offence. Exh.2349-Yadi of SIT showing list of accused of their tenure. Exh.2351- Total five page of yadi of P.M. and inquest. Exh.2352- True copy of Burial receipt No.992 of deceased Afrinbanu Majidbhai Shaikh. Exh.2353- True copy of burial receipt No.970 of deceased, Tarkasbibi Abdulgani Shaikh. Exh.2354- copy of Burial receipt No.1017 of deceased Kadarji (Afrinbanu Meblahasan) Mahebubhasan Shaikh as well as xerox of affidavit of Meblahasan Munirahmed Shaikh. Exh.2355- Burial receipt No.998 of deceased, Mahebubi Vasumiya Shaikh and xerox of affidavit of Mohammad Hussain Munirahmed Shaikh. Exh.2356-True copy of burial receipt No.1041 of deceased Jenabbibi Khalidbhai Shaikh Exh.2357-True copy of burial receipt No.1010 of deceased Rabiyabibi Rahimbhai Shaikh. Exh.2358- Copy of Burial receipt No.994 of deceased Mumtazbanu Mohammad Shaikh. Exh.2359- Xerox copy of burial receipt No.971 of deceased Kalimuddin Ahmedbhai Qureshi Exh.2360- Xerox copy of burial receipt No.971 of deceased Kalimuddin Ahmedbhai Qureshi Exh.2361- True copy of burial receipt No.975 of deceased Reshmabanu Iqbalahmed Shaikh

PW No.	Exh.	Name of Witness	Status of Witness & involves which accused	Proves or refers documents during deposition, if any, or brought in cross.
				Exh.2362- Letter to Mr. J.S.Gedam, P.S.I. by I.O. Mr. V.V. Chaudhari for the print out of mobile call details of the accused, (1) Babu Bajrangi, (2) Maya Kodnani, (3) Raju Chaumal (4) Kishan Korani, (5) Kirpalsinh and (6) Bipin Panchal between 27/02/2002 and 04/03/2002. Exh.2363- F.I.R. of Naroda I-C.R. No. 177/02,Hasambhai Abubakar Saiyad. Exh.2385-Original Witness Summons of Ramesh Chhara (A-47) as per Section 160 of Cr.P.C. Exh.2386- Carbon Copy of Original Witness Summons of Ramesh Chhara (A-47) as per Section 160 of Cr.P.C. Exh.2387-Original Witness Summons of Ramesh Keshavlal Didawala (Chhara) (A-47) as per Section 160 of Cr.P.C. Exh.2388- Carbon Copy of Original Witness Summons of Ramesh Keshavlal Didawala (Chhara) (A-47) as per Section 160 of Cr.P.C. Exh.2389- Letter from Vodafone to the S.P., SIT regarding name of holder of four Mobile Phones. Exh.2390- Letter from IDEA Cellular Ltd. to I.O. SIT regarding mobile No. 9824085556. <u>BY COURT</u> Exh.2391- Letter of Indian Oil Corporation to SIT about information regarding F.I.R. 100/02, about Cylinder in Uday Gas Agency. Exh.2392- Letter from Mr.V.V. Chaudhari, I.O., S.I.T. to Chief Area Manager regarding getting the information of Uday Gas Agency.

F. List of Documents (Prosecution) :

(13-B) The prosecution has produced following documentary evidence in support of its case.

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
1.	143	Panchnama of place of offence in case of I- C.R.No.111/02 of Naroda Police Station	1	12/03/02	By consent in cross
2.	148	Complaint, I-C.R.No.115/02 of Sumarmiya Mahamadmiya Makrani page No.11, 12 of file No.3 of charge-sheet (PW-2)	2	07/03/02	In chief
3.	162	Panchnama of place of offence in I-C.R.No.163/02 of Naroda Police Station (Residence of Jubedabibi)	8	14/05/02	In chief
4.	164	Panchnama of residence of Mehboob Mohammadhussain Shaikh (I-C.R.No.180/02 of Naroda PS)	9	15/05/02	In chief
5.	177	Recovery panchnama of jewellery from the dead body of one unknown female.	16	05/03/02	In chief
6.	185	Witness summons of PW-17 (Hostile)	17	13/11/09	In cross
7.	186	Driving licence and PAN Card of PW-17	17	- - -	In cross
8.	192	Inquest panchnama of dead body of one unknown boy aged about 10 years.	19	01/03/02	In chief
9.	194	Inquest panchnama of two unknown persons.	20	01/03/02	In chief
10.	203	Inquest panchnama of the dead body of Saidabanu Ibrahimbhai Shaikh	23	02/03/02	In chief
11.	205	Inquest panchnama of one unknown male aged about 40 years, one unknown female aged about 30 years and one human remains.	24	02/03/02	In chief
12.	207	Inquest panchnama of Hamidraza Mohammad Maru.	25	11/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
13.	210	Inquest panchnama of dead body of Sakina Babubhai Bhatti.	26	10/03/02	In chief
14.	212	Inquest panchnama of dead body of Mehboobbhai Khurshidahmed Shaikh	27	05/03/02	In chief
15.	214	Inquest panchnama of Asif Sabbirbhai.	28	04/03/02	In chief
16.	219	Identification panchnama of Lalbi, Jadikhala and of Mumtaz	29	05/03/02	In chief
17.	221	Inquest panchnama of Supriya Marjid.	30	07/03/02	In chief
18.	224	Inquest panchnama of Sarmuddin Khalid Noor Mohammad.	32	05/03/02	In chief
19.	232	Inquest panchnama of Razzak Babubhai Bhatti.	33	11/03/02	In chief
20.	235	Yadi for Identification Parade of A-38	34	30/09/02	In chief
21.	236	Panchnama of Identification Parade of A-38	34	03/10/02	In chief
22.	239	Yadi for Identification Parade of A-33	35	21/11/07	In chief
23.	240	Panchnama of Identification Parade of A-33	35	23/11/07	In chief
24.	244	Original Yadi of Identification Parade for A-53	36	22/10/08	In chief
25.	245	Original Yadi given to IO for the Identification Parade of A-53.	36	04/11/08	In chief
26.	246	Original panchnama of Identification Parade of A-53	36	10/11/08	In chief
27.	247	Original Yadi to hold Identification Parade of A-54	36	22/10/08	In chief
28.	248	Original Yadi given to IO for Identification Parade of A-54	36	04/11/08	In chief
29.	249	Original panchnama of Identification Parade of A-54.	36	11/11/08	In chief
30.	250	Original Yadi to hold I-Parade of A-56.	36	22/10/08	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
31.	251	Original Yadi given to IO for Identification Parade of A-56	36	04/11/08	In chief
32.	252	Original panchnama of Identification Parade of A-56.	36	12/11/08	In chief
33.	258	Application to SIT given by PW-37, Salimbhai Shaikh.	37	17/04/08	In chief
34.	268	Complaint being I-CR No. 117/02 of Umedhasan Kallubhai Qureshi (PW-38) page No.13 & 14 from the record of Trial Court.	38	07/03/02	In chief
35.	277	Injury Certificate of Ahmed Mohammad Hussain.	39	10/04/02	In chief
36.	278	Page Nos. 1 to 26 of Case papers of Ahmed Mohammad Hussain (through PW-76).	39	10/04/02	In chief
37.	279	Injury Certificate of Shoeb Shaikh (aged 20 days)	39	10/04/02	In chief
38.	280	Page Nos.1 to 14 of case papers of Shoeb Shaikh (through PW-151).	39	10/04/02	In chief
39.	281	Injury Certificate of Shahenazbanu Munavar.	39	28/05/02	In chief
40.	282	Page Nos. 1 to 29 of case papers of Shahenazbanu Munavar.	39	28/05/02	In chief
41.	283	Injury Certificate of Raziabanu Mohammad Aiyub (PW-151).	39	28/05/02	In chief
42.	284	Page No.1 to 37 of case papers of Raziyabanu Mohammad Aiyub (PW-151).	39	28/05/02	In chief
43.	285	Injury Certificate of Ahmed Badshah (PW-154).	39	31/03/03	In chief
44.	286	Page No. 1 to 105 of case papers of Ahmed Badshah (PW-154).	39	31/01/03	In chief
45.	291	Complaint being I-C.R. No. 129/02 of Taufiqmiya Akbarmiya Sumra (PW-40), Page No.17 of File No.3 of Trial Court record.	40	08/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
46.	292	F.I.R. of Naroda I-C.R.No. 100/02 filed by V.K. Solanki, PSI, Naroda Patia.	- -	28/02/02	Admitted by defence
47.	293	F.I.R. of Naroda I-C.R.No. 111/02, Shri Mehmoodbhai Abbasbhai Bagdadi (PW-1).	- -	07/03/02	Admitted by defence
48.	294	F.I.R. of Naroda I-C.R.No. 115/02, Shri Sumarmiya Mohammedmiya Makrani (PW-2).	- -	07/03/02	Admitted by defence
49.	295	F.I.R. of Naroda I-C.R. No. 117/02, Ummedhasan Kallubhai Qureshi (PW-38).	- -	07/03/02	Admitted by defence
50.	296	F.I.R. of Naroda I-C.R. No. 127/02, Shri Abjalbanu Liyakathussain (PW-53).	- -	08/03/02	Admitted by defence
51.	297	F.I.R. of Naroda I-C.R. No. 129/02, Shri Taufiqmiya Akbarmiya Sumra (PW-40).	- -	08/03/02	Admitted by defence
52.	298	F.I.R. of Naroda I-C.R. No. 130/02, Shri Akbarmiya Jammedmiya Sumra.	- -	08/03/02	Admitted by defence
53.	299	F.I.R. of Naroda I-C.R. No. 153/02, Shri Alauddin Adambhai Mansuri (PW-41).	- -	12/03/02	Admitted by defence
54.	300	F.I.R. of Naroda I-C.R. No. 161/02, Safiyabanu Yakubbhai Shaikh (PW-45).	- -	13/03/02	Admitted by defence
55.	301	F.I.R. of Naroda I-C.R. No. 162/02, Shri Kasamali Akbarali Saiyad.	- -	13/03/02	Admitted by defence
56.	302	F.I.R. of Naroda I-C.R. No. 163/02, Jubedabibi Rashidbhai Shaikh (PW-54).	- -	13/03/02	Admitted by defence
57.	303	F.I.R. of Naroda I-C.R. No. 164/02, Kamrunnisa Muradali Shaikh (PW-56).	- -	13/03/02	Admitted by defence
58.	304	F.I.R. of Naroda I-C.R. No. 176/02, Farooqbhai Kasambhai Saiyad (PW-55).	- -	14/03/02	Admitted by defence
59.	305	F.I.R. of Naroda I-C.R. No. 179/02, Malek Allarakh	- -	14/03/02	Admitted by

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Gulammohammed.			defence
60.	306	F.I.R. of Naroda I-C.R. No. 180/02, Mehboobbhai Mohammad Hussain Budli (Shaikh).	- -	14/03/02	Admitted by defence
61.	307	F.I.R. of Naroda I-C.R. No. 181/02, Sairabanu Mehboobbhai Shaikh (PW-57).	- -	15/03/02	Admitted by defence
62.	308	F.I.R. of Naroda I-C.R. No. 182/02, Babubhai Moiyuddin Saiyad (PW-73).	- -	15/03/02	Admitted by defence
63.	309	F.I.R. of Naroda I-C.R. No. 183/02, Muzarsha Sarmuddin Shaikh.	- -	15/03/02	Admitted by defence
64.	310	F.I.R. of Naroda I-C.R. No. 184/02, Munirkhan Jahangirkhan Pathan.	- -	15/03/02	Admitted by defence
65.	311	F.I.R. of Naroda I-C.R. No. 185/02, Sarmoddin Khwaja Hussain Shaikh (PW-59).	- -	15/03/02	Admitted by defence
66.	312	F.I.R. of Naroda I-C.R. No. 187/02, Abdulkarim Saiyadrasul Shaikh (PW-61).	- -	15/03/02	Admitted by defence
67.	313	F.I.R. of Naroda I-C.R.No. 188/02, Usmanbhai Daudbhai (PW-60).	- -	16/03/02	Admitted by defence
68.	314	F.I.R. of Naroda I-C.R. No. 204/02, Mohammadsalim Abdulrahim Shaikh.	- -	19/03/02	Admitted by defence
69.	315	F.I.R. of Naroda I-C.R. No. 208/02, Rashidbhai Bashirbhai Shaikh.	- -	19/03/02	Admitted by defence
70.	316	F.I.R. of Naroda I-C.R. No. 210/02, Ibrahimbhai Daudbhai Mansuri.	- -	19/03/02	Admitted by defence
71.	317	F.I.R. of Naroda I-C.R. No. 238/02, Hussainabanu Azgarkhan Pathan (PW-135)	- -	14/04/02	Admitted by defence
72.	318	F.I.R. of Naroda I-C.R. No. 267/02, Anisha Kasambhai Mansuri.	- -	15/05/02	Admitted by defence

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
73.	323	Complaint being I-C.R. No. 153/02 of Allaudin Adambhai Mansuri (PW-41), Page No. 32 File No.3 of the Trial Court record.	41	11/03/02	In chief
74.	326	Page No. 1 to 4 and 5 x-ray plate of case papers of injured Shokat Nabhubhai Mansuri (PW-200).	42	03/03/02	In chief
75.	327	Injury certificate of Shokatbhai Nabhubhai Mansuri (PW-200).	42	21/03/02	In chief
76.	334	Injury Certificate of Bashir Ahmed Dhobi.	43	15/03/02	In chief
77.	335	Page No. 1 to 26 and 5 x-ray plates of case papers of Bashir Ahmed Dhobi.	43	28/02/02	In chief
78.	336	Injury Certificate of Shabana Abdul Rahim.	43	15/03/02	In chief
79.	337	Page No.1 to 12 of case papers of Shabana Abdul Rahim.	43	28/02/02	In chief
80.	338	Injury Certificate injury of Kamar Raza Mohammad Maru	43	24/07/02	In chief
81.	339	Case papers (page No.1 to 21) of Kamar Raza Mohammad Maru Pathan (through PW-191)	43	28/02/02	In chief
82.	340	Injury Certificate of Ayeshabanu Mohammad Maru Pathan (through PW-191)	43	06/09/02	In chief
83.	341	Page No.1 to 24 of case papers of Ayeshabanu Mohammad Maru Pathan (through PW-191)	43	28/02/02	In chief
84.	342	Injury Certificate of Afsanabanu Rehman Shaikh (PW-160).	43	13/09/02	In chief
85.	343	Page No.1 to 23 of case papers of Afsanabanu Rehman Shaikh (PW-160).	43	28/02/02	In chief
86.	344	Injury certificate of Shabbir Ahmed Munir Ahmed Shaikh (PW-159).	43	24/07/02	In chief
87.	345	Page No.1 to 18 of case	43	28/02/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		papers of Shabbir Ahmed Munir Ahmed Shaikh (PW-159)			
88.	346	Injury Certificate of Sufiyabanu Inayat Saiyad.	43	15/03/02	In chief
89.	347	Page No. 1 to 6 of original case papers of treatment of injured Sufiyabanu Inayat Saiyad of Civil Hospital, Ahmedabad E.P.R. No. 2361/5/2002.	43	01/03/02	In chief
90.	348	P.M.Note unknown female aged 35 years.	43	04/03/02	In chief
91.	353	Yadi to obtain P.M. Note of deceased Hajrabanu @ Jadi Khala.	43	28/11/02	In cross
92.	354	P.M.No.619/02 of an unknown lady. Page No.1629 to 1635 File No.2 of the Trial Court record in Sessions case No. 245/09.	43	04/03/02	In cross
93.	355	Yadi to RMO for P.M. and to keep the dead body in cold room.	43	04/03/02	In cross
94.	356	Marnottar Report submitted by Naroda Police Station of unknown female deceased.	43	04/03/02	In cross
95.	357	Inquest Panchnama of unknown dead body. (carbon copy of Exh.937)	43	04/03/02	In cross
96.	362	Injury Certificate of Naimuddin Ibrahim Shaikh (PW-158).	44	20/04/02	In chief
97.	363	Page 1 to 13 of case papers of Naimuddin Ibrahim Shaikh (PW-158).	44	28/02/02	In chief
98.	364	Injury Certificate of Jetunbanu Aslammiya Shaikh (PW-206).	44	20/04/02	In chief
99.	365	Page 1 to 12 of case papers of Jetunbibi Aslammiya Shaikh (PW-206).	44	28/02/02	In chief
100.	366	Injury Certificate of Farzanabanu Aiyubkhan Pathan (PW-106).	44	28/05/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
101.	367	Page 1 to 18 of case papers of Farjanabanu Aiyubbhai Pathan (PW-106).	44	28/02/02	In chief
102.	368	Injury Certificate of Reshmabanu Aiyubkhan Pathan (PW-147).	44	28/05/02	In chief
103.	369	Page 1 to 18 of case papers of Reshmabanu Aiyubkhan Pathan (PW-147).	44	28/02/02	In chief
104.	370	Injury Certificate of Saberabanu Abdulaziz Shaikh (PW-214).	44	28/05/02	In chief
105.	371	Page 1 to 23 of case papers of Saberabanu Abdulaziz Shaikh (PW-214).	44	28/02/02	In chief
106.	372	Injury Certificate of Usmanbhai Valibhai (PW-163).	44	29/07/02	In chief
107.	373	Page 1 to 18 of case papers of Usmanbhai Valibhai (PW-163).	44	28/02/02	In chief
108.	374	Injury Certificate of Yasin Usmanbhai Mansuri (PW-164).	44	29/07/02	In chief
109.	375	Page 1 to 24 of case papers of Yasin Usmanbhai Mansuri (PW-164).	44	28/02/02	In chief
110.	376	Injury Certificate of Shahjahan Kabirahmed Shaikh (PW-161).	44	14/08/02	In chief
111.	383	Printed complaint of Safiyabanu Yakubbhai Shaikh (PW-45).	45	06/03/02	In chief
112.	389	P.M.Note of unknown male aged 22 years.	46	01/03/02	In chief
113.	390	Intimation of Police Surgeon about non-finding of papers of P.M.No. 424/02.	46	28/02/02	In cross
114.	391	Page No.1205 to 1211 of file No.2 : P.M. Note of unknown male from Trial Court's record.	46	01/03/02	In cross
115.	393	P.M. Note of unknown male.	47	02/03/02	In chief
116.	394	Some part of exh.662.	47	01/03/02	In cross
117.	395	Page No.1141 to 1147 of P.M.	47	02/03/02	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Note of unknown male from Trial Court's record.			
118.	396	Page No.1141 to 1147 of P.M. Note of unknown male from Trial Court's record.	47	02/03/02	In cross
119.	400	P.M.Note of one unknown male aged 45 years.	48	03/03/02	In chief
120.	401	Page No.1541 to 1547 of P.M. Note of unknown male from Trial Court's record.	48	02/03/02	In cross
121.	402	Inquest panchnama of one unknown male.	48	02/03/02	By consent in cross
122.	404	P.M.Note of unknown male aged 30 years.	49	02/03/02	In chief
123.	405	Page No.1275 to 1281 of P.M. Note of unknown person from Trial Court's record.	49	02/03/02	In cross
124.	406	Part of Exh.662.	49	- - -	In cross
125.	411	P.M.Note of Asif Shabbirbhai.	50	05/03/02	In chief
126.	421	P.M.Note of Hamidraza Mohammad Maru.	51	11/05/02	In chief
127.	422	Marnottar Report submitted by Naroda Police Station of deceased Hamidraja Mohammad Maru.	51	- -	By consent In cross
128.	423	P.M.Note of Gulabbhai Kalubhai Vanzara (of deceased accused)	51	28/02/02	In cross
129.	427	Application of Amina Abbas (PW-52) to SIT.	52	17/04/08	In chief
130.	430	Xerox photograph of Amina Abbas on page No.26 of Combat Magazine.	52	March April-02	By defence In cross
131.	431	Payment voucher regarding payment received by Amina Abbas by Confisec Printers, Ahmedabad.	52	07/03/02	By defence In cross
132.	437	Complaint of Abjalbanu Liyakat Hussain (PW-53) I-C.R. No.1276/02	53	08/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
133.	443	Printed complaint of Naroda I-C.R.No.163/02, Jubedabibi Rashidbhai Shaikh (PW-54).	54	05/03/02	In chief
134.	445	Printed complaint of Naroda I-C.R.No.176/02, Farooqbhai Kasambhai Saiyad (PW-55).	55	06/03/02	In chief
135.	449	Printed complaint of Naroda I-C.R. No.164/02, Kamrunnisha Muradali Shaikh (PW-56).	56	06/03/02	In chief
136.	453	Printed complaint of Naroda I-C.R.No.181/02, Sairabanu Mehboobbhai Shaikh (PW-57).	57	06/03/02	In chief
137.	455	Printed complaint of Naroda I-C.R.No.183/02, Munirsha Sarmuddin Shaikh (PW-58).	58	05/03/02	In chief
138.	457	Printed complaint of Naroda I-C.R.No.185/02, Sarmuddin Khwajahussain Shaikh (PW-59).	59	05/03/02	In chief
139.	463	Printed complaint of Naroda I-C.R.No.187/02 Abdul Karim Saiyadrasul (PW-61).	61	06/03/02	In chief
140.	465	Printed complaint of Naroda I-C.R.No.188/02, Usman Daudbhai (PW-60).	62	05/03/02	In chief
141.	470	Yadi for the map of the place of offence.	63	01/09/09	In chief
142.	471	Letter to send map of the place of offence.	63	22/10/09	In chief
143.	473	Endorsement in Yadi by SIT to Circle Inspector for map.	63	01/09/09	In chief
144.	474 (part 1 to 5)	Total four maps of the place of offence. (Exh.474/1 to 474/5)	63	22/10/09	In chief
145.	479	Rough map prepared by PW-63.	63	- -	In cross
146.	500	Printed application with loss-damage form of Jubedakhatun Rahimmiya (PW-70).	70	05/03/02	In chief
147.	504	Injury Certificate of Yasin A.	71	01/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Majid (through PW-156)			
148.	506	Case papers of Yasin Abdulmajid (page No.1 to 35 and x-ray) (through PW-156)	71	01/03/02	In chief
149.	507	Injury Certificate of Bablu Mehboobbhai	71	02/05/02	In chief
150.	509	Page No.1 to 34 and X-ray of case papers of Bablu Maheboobbhai.	71	01/03/02	In chief
151.	511	Application to SIT by Sakilabanu Firozahmed Ansari (PW-72).	72	17/04/08	In cross
152.	518	Printed complaint of Naroda I-C.R.No.182/02, Basubhai Moiyuddin Saiyad (PW-73).	73	05/03/02	In chief
153.	520	Application of PW-73 to SIT.	73	09/05/08	In chief
154.	528	Application of PW-76 to SIT.	76	17/04/08	In chief
155.	532	Printed complaint along with Loss/Damages Form of PW-78.	78	06/03/02	In chief
156.	544	Injury Certificate of Zarinabanu Naimuddin (PW-205).	84	02/04/02	In chief
157.	546	Page 1 to 28 and 11 X-ray of case papers of Zarinabanu Naimuddin.	84	01/03/02	In chief
158.	553	Printed complaint along with Loss/Damage Form of Yunusbhai Mohammadbhai Shaikh (PW-85).	85	06/03/02	In chief
159.	569	Application to SIT by Jayedabanu Iqbalahmed Shaikh (PW-93).	93	19/04/08	In chief
160.	578	P.M.Note of Sofiyabanu Mamudbhai Shaikh.	95	01/03/02	In chief
161.	579	P.M.Note of unknown female aged 40 years.	95	02/03/02	In chief
162.	582	P.M.Note of unknown female aged 30 years.	96	01/03/02	In chief
163.	583	P.M.Note of Saeedabanu Ibrahim Shaikh.	96	02/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
164.	584	P.M.Note of Jubaidabanu Shabbir Ahmed Shaikh.	96	01/03/02	In chief
165.	585	P.M.Note of unknown female aged 35 years.	96	01/03/02	In chief
166.	597	P.M.Note of unknown male aged 10 years.	97	01/03/02	In chief
167.	601	P.M.Note of unknown male aged 25 years.	98	01/03/02	In chief
168.	602	P.M.Note of unknown male.	98	02/03/02	In chief
169.	603	P.M.Note of unknown male aged 12 years.	98	02/03/02	In chief
170.	604	P.M.Note of unknown female aged 20 years.	98	02/03/02	In chief
171.	605	P.M.Note of unknown male aged 35 years.	98	03/03/02	In chief
172.	617	P.M.Note of unknown male.	99	02/03/02	In chief
173.	618	P.M.Note of unknown male aged 32 years.	99	02/03/02	In chief
174.	619	P.M.Note of unknown female aged 12 years.	99	02/03/02	In chief
175.	623	P.M.Note of unknown child aged 7 years.	100	02/03/02	In chief
176.	624	P.M.Note of unknown male aged 35 years.	100	02/03/02	In chief
177.	625	P.M.Note of unknown child aged 8 years.	100	02/03/02	In chief
178.	626	P.M.Note of unknown male aged 30 years.	100	02/03/02	In chief
179.	627	Yadi to R.M.O., Civil Hospital while depositing P.M.Notes by Dr.R.S. Bhavsar (PW-100).	100	15/03/02	In cross
180.	633	P.M.Note of unknown female aged 32 years.	101	02/03/02	In chief
181.	634	P.M.Note of unknown female aged 15 years.	101	02/03/02	In chief
182.	635	Marnottar report of unknown girl (PM 523).	101	- - -	In cross
183.	636	Marnottar report of unknown lady (PM 524).	101	- - -	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
184.	638	P.M.Note of unknown male aged 30 years.	102	02/03/02	In chief
185.	639	P.M.Note of unknown female aged 35 years.	102	02/03/02	In chief
186.	642	P.M.Note of unknown male child aged 5 years.	102	02/03/02	In chief
187.	643	P.M.Note of unknown female aged 12 years.	102	02/03/02	In chief
188.	657	P.M.Note of unknown female aged 25 years.	103	02/03/02	In chief
189.	658	P.M.Note of unknown male aged 20 years.	103	02/03/02	In chief
190.	659	P.M.Note of unknown female aged 25 years.	103	02/03/02	In chief
191.	661	Intimation by Police Surgeon, Civil Hospital with reference to P.M. No.575, 576 and 577/02.	103	16/03/10	In chief
192.	Exh. 662 (as a whole) Exh. 394 and 406 were in parts	Inquest panchnama drawn for death of 58 persons of khancha / water tank / evening occurrence.	103, 47, 49	01/03/02	By consent in cross
193.	669	Application by Mohammadsalim Mohammadhussain Shaikh (PW-104) to SIT.	104	17/04/08	In cross
194.	670	Application by Salimbhai Mohammad Hussain Shaikh and others (PW-104) to SIT.	104	30/04/08	In cross
195.	678	Printed complaint of Hussainbhai Valibhai Kaladiya, (PW-105). (A-22, 41, 44 and Lt.Guddu)	105	06/03/02	In chief
196.	690	Application by Farzanabanu Aiyubkhan Pathan (PW-106) to SIT.	106	17/04/08	In cross
197.	700	Application by	107	19/04/08	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Mohammadbhai Kalubhai Khalifa (PW-107) to SIT.			
198.	718	Application by Fatimabibi Mohammad Yusuf Shaikh (PW-112) to SIT.	112	17/04/08	In chief
199.	721	Application by Jainulabedin Mohammadkhwaja Shaikh (PW -113) to SIT.	113	19/04/08	In chief
200.	724	Printed complaint by Jenulabedin Shaikh (PW-113).	113	06/03/02	In cross
201.	741	Application by Rehmanbhai Sakurabhai Saiyad (PW-114) to SIT.	114	19/04/08	In cross
202.	749	Printed complaint by Ibrahimbhai Chhotubhai Shaikh (PW-115).	115	06/03/02	In cross
203.	760	P.M. Note of Sakina Babubhai Bhatti.	118	10/03/02	In chief
204.	762	P.M.Note of Shakeena Mehboobbhai.	119	05/03/02	In chief
205.	763	P.M.Note of Mehboob Khurshidbhai Shaikh.	119	05/03/02	In chief
206.	764	Yadi to draw Inquest Panchnama of Mehboob Khurshidbhai Shaikh.	119	05/03/02	In cross
207.	774	P.M.Note of unknown female aged 45 years.	120	02/03/02	In chief
208.	775	P.M.Note of unknown male child aged 2 years.	120	02/03/02	In chief
209.	776	P.M.Note of unknown female.	120	03/03/02	In chief
210.	777	P.M.Note of unknown female child aged 7 years.	120	02/03/02	In chief
211.	779	P.M.Note of Supriya Marjid.	121	07/03/02	In chief
212.	782	P.M.Note of unknown female aged 35 years.	122	02/03/02	In chief
213.	784	Intimation by Police Surgeon, Civil Hospital for P.M.No.590-538/02.	122	05/05/10	In chief
214.	787	P.M.Note of unknown male aged 30 years.	123	02/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
215.	788	P.M.Note of unknown female aged 25 years.	123	02/03/02	In chief
216.	789	P.M.Note of unknown male child aged 7 years.	123	02/03/02	In chief
217.	795	P.M.Note of unknown male aged 40 years.	124	02/03/02	In chief
218.	796	P.M.Note of unknown female aged 30 years.	124	02/03/02	In chief
219.	797	P.M.Note of unknown male aged 30 years.	124	02/03/02	In chief
220.	799	P.M.Note of unknown male aged 22 years.	125	02/03/02	In chief
221.	800	P.M.Note of unknown child aged 8 years.	125	02/03/02	In chief
222.	801	P.M.Note of unknown child aged 5 years.	125	02/03/02	In chief
223.	804	P.M.Note of unknown male aged 14 years.	126	02/03/02	In chief
224.	806	Intimation by Police Surgeon, Civil Hospital for P.M.No. 531/02.	126	05/05/10	In chief
225.	807	P.M.Note of unknown male aged 22 years.	126	02/03/02	In chief
226.	813	P.M.Note of Razzak Babubhai Bhatti.	127	12/03/02	In chief
227.	815	P.M.Note of unknown male child aged 1 year.	128	02/03/02	In chief
228.	816	P.M.Note of unknown male aged 40 years.	128	02/03/02	In chief
229.	818	Original P.M.Note of Kudratbibi Khurshidbhai.	128	05/03/02	In chief
230.	819	P.M.Note of Shermoddin Khalid Noor Mohammad.	128	05/03/02	In chief
231.	821	P.M.Note of unknown female aged 25 years.	129	04/03/02	In chief
232.	822	P.M.Note of unknown male child aged 5 years.	129	03/03/02	In chief
233.	824	Intimation from Police Surgeon, Civil for P.M. No.	129	07/05/10	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		591/02.			
234.	825	P.M.Note of unknown male child aged 3 years.	129	03/03/02	In chief
235.	834	Yadi to record D.D.	130	03/03/02	In chief
236.	835	Yadi of Naroda Police Station for D.D.	130	03/03/02	In chief
237.	836	Original D.D. of deceased Sufiyabanu Abdulmajid Shaikh	130	03/03/02	In chief
238.	837	D.D. of deceased Shermoddin Khalid Noormohammad.	130	03/03/02	In chief
239.	851	Yadi to record D.D. of deceased Mehboobbhai Khurshid Ahmed.	131	04/03/02	In chief
240.	852	Yadi to record D.D. of deceased Sakinabanu Farooq Ahmed Kalubhai Bhatti.	131	04/03/02	In chief
241.	853	D.D. of deceased Mehboobbhai Khurshid Ahmed.	131	04/03/02	In chief
242.	854	D.D. of deceased Sakinabanu Farooq Ahmed Bhatti.	131	04/03/02	In chief
243.	862	P.M.Note of unknown female aged 8 years.	132	02/03/02	In chief
244.	863	P.M.Note of unknown female aged 4 years.	132	02/03/02	In chief
245.	865	Intimation of Police Surgeon, Civil for P.M.No.532/02.	132	14/05/10	In chief
246.	866	P.M.Note of unknown female aged 35 years.	132	02/03/02	In chief
247.	875	Discovery Panchnama of weapon (Sword) by A-22, Suresh @ Richards @ Suresh Langado Kantilal Dedawala (Chhara).	133	02/06/02	In chief
248.	878	Case papers and Injury Certificate of Kulsumbanu Ibrahim (PW-153).	134	27/03/02	In chief
249.	880	F.I.R. of Naroda I-C.R.No. 238/02, Hussainabanu Ajgarkhan Pathan (PW-135) (handwritten)	135	14/04/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
250.	896	Application by Husainabanu Ajgarkhan Pathan (PW-135) to SIT.	135	19/04/08	In cross
251.	907	Application by Basir Nanhebhai Mansuri (PW-136) to SIT.	136	17/04/08	In cross
252.	929	Panchnama of place of offence in I-C.R.No.187/02 of Naroda Police Station.	138	14/05/02	In chief
253.	931	Panchnama of place of offence in I-C.R.No.177/02 of Naroda Police Station.	138	25/06/02	In chief
254.	937	Inquest panchnama of one unknown female aged about 35 years (original of Exh.357).	139	04/03/02	In chief
255.	950	Panchnama of damage to house of PW-140 and damage to Rickshaw No.GRS 8 and Rickshaw No. GJ-1-VV-4487	140	08/05/02	In cross
256.	953	Application by Shakurbhai Tajubhai Shaikh (PW-140) to SIT.	140	17/04/08	In cross
257.	1016	Application by Reshmabanu Nadimbhai Saiyad (PW-147) to SIT.	147	19/04/08	In cross
258.	1034	Application of Khalifa Faridaben Abdulkadar (PW-149)	149	05/05/08	In cross
259.	1045	Application of Ishaqkhan Sardarkhan Pathan (PW-150) to SIT	150	05/05/08	In cross
260.	1051	Application of Dildar Umrao Saiyad (PW-143) to SIT.	143	27/04/08	In cross
261.	1096	Application by Abdulmajid Mohammadusman Shaikh (PW-156) to SIT.	156	19/04/08	In cross
262.	1111	Printed complaint by Mansuri Mohammadsafi Allabax for loss & damage form (PW-157).	157	05/03/02	In cross
263.	1112	Application by Mohammad Shafibhai Allabaksh (PW-157) to SIT.	157	23/04/08	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
264.	1130	Application by Naimudin Ibrahim Shaikh (PW-158) to SIT.	158	17/04/08	In cross
265.	1151	Panchnama regarding loss to the house of PW-162	162	08/05/02	In cross
266.	1152	Affidavit filed in the Supreme Court by Rafiqbhai Kallubhai Shaikh (PW-162)	162	06/11/03	In cross
267.	1207	Printed complaint of PW-175, Yakubali Kasamali Saiyad. (A-44, 10, 41, 22, Lt.Guddu and Lt.Bhavani)	175	14/05/02	In chief
268.	1213	Application by Julekhabanu Sardarahmed Shaikh (PW-176) to SIT.	176	17/04/08	In cross
269.	1228	Seizure panchnama of the V.C.D. of the place of offence of I-C.R.No.100/02 of Naroda Police Station.	178	11/03/02	In chief
270.	1229	Panch Slip of muddamal article No.6.	178	- - -	In chief
271.	1230	Panch slip of Videography cassettes, muddamal article No.6.	178	- - -	In chief
272.	1253	Application by Afsarabi Kabirali Shaikh (PW-181) to SIT.	181	19/04/08	In chief
273.	1291	Application by Mohammadimran Imtiyazhussain Momin (PW-189) to SIT.	189	29/05/08	In cross
274.	1296	Report of I.O. regarding death of the accused No.35.	- -	03/12/10	By P.P.
275.	1297	Death certificate of accused No.35.	- -	27/10/10	By P.P.
276.	1303	Panchnama regarding identification of the dead body of Moin Khan by Razzakbhai Usmanbhai.	191	05/03/02	In chief
277.	1306	Application by Mohammadmaruf Mohammadayub Shaikh (PW-	191	19/04/08	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		191) to the Chairman, SIT to record their statement.			
278.	1315	Application by Rasidaben Imtiyazbhai Momin (PW-192) to SIT.	192	29/05/08	In cross
279.	1333	Inquest panchnama of the dead bodies of one unknown male child aged about 10 years and two unknown females.	- -	01/03/02	By consent
280.	1345	Panchnama of place of offence in I-C.R. No.181/02 of Naroda Police Station.	195	17/03/02	In chief
281.	1346	Panchnama of place of offence in I-C.R. No.182/02 of Naroda Police Station.	195	17/03/02	In chief
282.	1347	Panchnama of place of offence in I-C.R. No.183/02 of Naroda Police Station.	195	17/03/02	In chief
283.	1349	Panchnama regarding identification of dead bodies (seven) family members by Jayedabibi M. Qureshi (PW-90).	196	04/03/02	In chief
284.	1355	Application by Khairunnisha Riyajudin Shaikh (PW-197) to SIT.	197	19/04/08	In cross
285.	1364	Application by Harun Mohammadbhai Shaikh (PW-198) to SIT.	198	17/04/08	In chief
286.	1405	Application by Sharifabibi Iqbalbhai Shaikh (PW-203) to SIT.	203	17/04/08	In cross
287.	1426	Page No.42 and entry No.13 of Station Diaries.	200	- - -	In cross
288.	1427	Page No.50, entry No.18 of Station Diaries.	200	- - -	In cross
289.	1454	Inquest panchnama of Kudratbibi Khurshidbhai.	208	05/03/02	In chief
290.	1455	Panchnama of place of offence in I-C.R.No.164/02 of Naroda PS..	208	07/06/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
291.	1456	Application by Najeerkhan Rahimkhan Pathan (PW-208) to SIT.	208	23/05/08	In cross
292.	1464	Application by Shabana Bundubhai Qureshi (PW-209) to SIT.	209	17/04/08	In cross
293.	1479	Panchnama of loss / damage to the house of Shabana Bundubhai Qureshi (PW-209).	209	11/05/02	In cross
294.	1494	Discovery Panchnama of weapon (Sword) by A-44 Bipinbhai @ Bipin Autowala Umedbhai Panchal.	210	01/10/04	In chief
295.	1495	Panch slip of Muddamal Article No.2.	210	- - -	In chief
296.	1515	Application by PW-212, Ruksana Bundubhai Qureshi to SIT.	212	07/05/08	In cross
297.	1529	Application by Hasibkhan Achchankhan Pathan (PW-213) to SIT.	213	23/04/08	In cross
298.	1532	Certified copy of Judgement in Sessions Case No.241/03 and 242/03 (for death of Ranjit) I-CR No.134/02 dated 10/03/02	213	31/08/04	In cross
299.	1556	Additional Panchnama of place of offence of I-C.R.No.100/02 of Naroda Police Station.	216	09/03/02	In chief
300.	1563	Panchnama of place of offence in I-C.R. No. 176/02 of Naroda Police Station.	217	15/05/02	In chief
301.	1572	Application by Nurbanu Zakirhussain Saiyad (PW-219) to SIT.	219	07/05/08	In cross
302.	1579	Notification published by Police Commissioner.	220	27/12/01	In chief
303.	1580	Order of Curfew by Police Commissioner, Ahmedabad.	220	28/02/02	In chief
304.	1583 To 1588	Certified copy of page No. 117, 120, 123, 150, 162, 164 of the Vardhi Book in which Vardhi was entered by Police	221	28/02/02 to 05/03/02	Admitted

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Constable, Kiranpuri, Bakal No.6462 in the matter of I-C.R. No.100/02 of Naroda Police Station from Civil Hospital, Shahibaug Police Station, Ahmedabad from 28/02/2002 to 05/03/2002 (page 1 to 6).			
305.	1590 To 1593	Certified copy of page No. 132, 133, 134, 137, 172, 190 of the Vardhi Book in which Vardhi was entered by Police Constable, Ranjitsinh, Bakal No.7374 in the matter of I-C.R. No.100/02 of Naroda Police Station from Civil Hospital, Shahibaug Police Station, Ahmedabad from 28/02/2002 to 11/03/2002. (page 7 to 14).	222	28/02/02 to 11/03/02	In chief
306.	1594	Page No.114 of Vardhi Book dated 28/02/2002 for the Entry of 12:20 hours.	222	28/02/02	In cross
307.	1595	Page No.111 of Vardhi Book dated 28/02/2002 for the Entry of 13:25 hours.	222	28/02/02	In cross
308.	1623	Application by PW-228, Javed Ismail Shaikh to SIT.	228	17/04/08	In cross
309.	1630	School leaving certificate of Jahid Hussain Ismail Shaikh, PW-228.	228	26/08/02	In cross
310.	1638	Application by PW-231 Julekhabegam Mohammadaiyub Shaikh to SIT.	231	19/04/08	In cross
311.	1639	Application by Julekhabibi Mohammad Aiyub Shaikh (PW-231) to SIT.	231	08/05/08	In cross
312.	1663	Application by Siddique Allabax Mansuri (PW-236) to SIT.	236	01/05/08	In cross
313.	1682	Page No.128 of Vardhi Book dated 01/03/2002 for entry of PW-241.	241	01/03/02	In chief
314.	1683	Page No.129 of Vardhi Book	241	01/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		dated 01/03/2002 for entry of five patients of PW-241.			
315.	1684	Page No.129, 130 of Vardhi Book dated 01/03/2002 for entry of eight patients.	241	01/03/02	In chief
316.	1685	Last portion of page No.130 of Vardhi Book dated 01/03/2002 for entry for patient, Raziyabanu Mohammedaiyub Shaikh.	241	01/03/02	In chief
317.	1686	Page No.124 & 125 of Vardhi Book dated 01/03/2002 for entry.	241	28/02/02	In cross
318.	1695	Application by Shabbirali Nivasali Ansari (PW-243) to SIT.	243	14/05/08	In cross
319.	1704	Application by Mayuddin Imamuddin Shaikh (PW-244) to SIT.	244	07/05/08	In chief
320.	1705	Printed complaint and Loss / Damage application of Mayuddin Immamuddin Shaikh.	244	06/03/02	In cross
321.	1724	Application by Mohammadyunus Abdulhaith Chaudhary (PW-248) to SIT.	248	07/05/08	In cross
322.	1744	Application by Mohammad Khalid Saiyadali Saiyad (PW-255) to SIT.	255	19/04/08	In cross
323.	1749 (Part I to IV)	Panchnama of place of offence in I-C.R.No.100/02 of Naroda Police Station (in four parts)	256	01/03/02 to 04/03/02	In chief
324.	1749 Part I	Panchnama of the place of offence (Page No.1 to 10)	256	01/03/02	In chief
325.	1749 Part II	Panchnama of the place of offence (Page No.11 to 34)	256	02/03/02	In chief
326.	1749 Part III	Panchnama of the place of offence (Page No.35 to 53)	256	03/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
327.	1749 Part IV	Panchnama of the place of offence (Page No.55 to 56)	256	04/03/02	In chief
328.	1772	Gujarat Government Gazzette where new name of PW-262, Vinubhai Khimabhai Delvadiya is shown.	262	13/06/02	In chief
329.	1773	Complaint of PSI Mr.V.K. Solanki (Delvadiya)	262	28/02/02	In chief
330.	1776 /1	C-Summary Case Papers of Ist-C.R. No.111/02 of Naroda Police Station.	263		In chief
331.	1776 /2	C-Summary Case Papers of Ist-C.R. No.117/02 of Naroda Police Station.	263		In chief
332.	1776 /3	C-Summary Case Papers of Ist-C.R. No.127/02 of Naroda Police Station.	263		In chief
333.	1776 /4	C-Summary Case Papers of Ist-C.R. No.130/02 of Naroda Police Station.	263		In chief
334.	1776 /5	C-Summary Case Papers of Ist-C.R. No.161/02 of Naroda Police Station.	263		In chief
335.	1776 /6	C-Summary Case Papers of Ist-C.R. No.162/02 of Naroda Police Station.	263		In chief
336.	1776 /7	C-Summary Case Papers of Ist-C.R. No.163/02 of Naroda Police Station.	263		In chief
337.	1776 /8	C-Summary Case Papers of Ist-C.R. No.164/02 of Naroda Police Station.	263		In chief
338.	1776 /9	C-Summary Case Papers of Ist-C.R. No.176/02 of Naroda Police Station.	263		In chief
339.	1776 /10	C-Summary Case Papers of Ist-C.R. No.177/02 of Naroda Police Station.	263		In chief
340.	1776 /11	C-Summary Case Papers of Ist-C.R. No.179/02 of Naroda Police Station.	263		In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
341.	1776 /12	C-Summary Case Papers of Ist-C.R. No.180/02 of Naroda Police Station.	263		In chief
342.	1776 /13	C-Summary Case Papers of Ist-C.R. No.181/02 of Naroda Police Station.	263		In chief
343.	1776 /14	C-Summary Case Papers of Ist-C.R.No. 182/02 of Naroda Police Station.	263		In chief
344.	1776 /15	C-Summary Case Papers of Ist-C.R. No.183/02 of Naroda Police Station.	263		In chief
345.	1776 /16	C-Summary Case Papers of Ist-C.R. No.184/02 of Naroda Police Station.	263		In chief
346.	1776 /17	C-Summary Case Papers of Ist-C.R. No.185/02 of Naroda Police Station.	263		In chief
347.	1776 /18	C-Summary Case Papers of Ist-C.R. No.187/02 of Naroda Police Station.	263		In chief
348.	1776 /19	C-Summary Case Papers of Ist-C.R. No.188/02 of Naroda Police Station.	263		In chief
349.	1776 /20	C-Summary Case Papers of Ist-C.R. No.204/02 of Naroda Police Station.	263		In chief
350.	1776 /21	C-Summary Case Papers of Ist-C.R. No.208/02 of Naroda Police Station.	263		In chief
351.	1776 /22	C-Summary Case Papers of Ist-C.R. No.210/02 of Naroda Police Station.	263		In chief
352.	1776 /23	C-Summary Case Papers of Ist-C.R. No.238/02 of Naroda Police Station.	263		In chief
353.	1776 /24	C-Summary Case Papers of Ist-C.R. No.267/02 of Naroda Police Station.	263		In chief
354.	1796	Copy of Station Diary of I-C.R.No. 99/02 and 100/02.	268	28/02/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
355.	1797	Report as per Section 157 of Cr.P.C. for I-C.R.No.100/02	268	28/02/02	In chief
356.	1798	Original Vardhi Book page No. 161 to 170 (both sides) of Naroda Police Station from 28/02/2002 to 05/03/2002. (Total 22 pages of certified copy and total 11 pages of typed copy)	268	28/02/02 to 05/03/02	In chief
357.	1801	Certified copy of page No.117 to 147 (both sides) of Occurrence Book No.7 as well as page No.1 to 9 (both sides) of Occurrence Book No.8 of A.M.C., alongwith forwarding letter. (Total 90 pages)	269	27/02/02 to 28/02/02	In chief
358.	1802	Certified copy of page No.51 to 59 of Occurrence Book of A.M.C., Naroda Fire Station. (Total 9 pages)	- - -	27/02/02 and 28/02/02	By consent
359.	1810 (whole page)	Certified copy of Patient Register of Maitri Hospital, Kuber Nagar, Ahmedabad.	272	28/02/02	In chief
360.	1814	Copy of Attendance Register of Accounts Branch of GSRTC (A-57)	273	February 2002	In chief
361.	1815	Copy of Attendance Register of Accounts Branch of GSRTC (A-59)	273	February 2002	In chief
362.	1816	Copy of Attendance Register of Accounts Branch of GSRTC (A-49)	273	February 2002	In chief
363.	1817	Page No.48 of Diesel Stock & Consumption Register of GSRTC.	273	27/02/02 to 01/03/02	In chief
364.	1818	True copy of page No.4 of Stock Register of Engine Oil of GSRTC from 27/02/2002 to 01/03/2002.	273	27/02/02 to 01/03/02	In chief
365.	1819	True copy of page No.10 of the Stock Register of Furnace Oil of GSRTC from 27/02/2002 to 01/03/2002.	273	27/02/02 to 01/03/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
366.	1825	Bandobast of police staff in Naroda Police Station on 27/02/2002 and 28/02/2002. (total 6 pages)	274	27/02/02 and 28/02/02	In cross
367.	1834	Discovery Panchnama of weapon (Sword) by accused, Manoj @ Manoj Sindhi Renumal Kukrani. (A-41)	275	25/08/04	In chief
368.	1835	Yadi to issue P.M. Note of deceased Ashif Sarmoddin Shaikh, P.M.Note bearing No. 518/02.	275	28/11/02	In chief
369.	1836	Yadi to issue P.M.Note of deceased Farhana D/o. Ayub Ladesha Qureshi, P.M. Note bearing No.496/02.	275	26/11/02	In chief
370.	1837	Yadi to issue P.M.Note of deceased Shahjahan, w/o. Sarmuddin Shaikh, P.M. Note bearing No.514/02.	275	28/11/02	In chief
371.	1838	Yadi to issue P.M.Note of deceased Shamsad, S/o. Rehmanbhai Saiyad, P.M. Note bearing No.521/02.	275	14/09/02	In chief
372.	1839	Yadi to issue P.M.Note of deceased Rukhsana, D/o. Rehmanbhai Saiyad, P.M. Note bearing No.527/02.	275	28/11/02	In chief
373.	1840	Yadi giving P.M.Note of deceased Rafiq Sarmoddin Shaikh, P.M.Note bearing No. 513/02.	275	28/11/02	In chief
374.	1841	Yadi to issue P.M.Note of deceased Hasanali Mahebbeali Mirza, P.M.Note bearing No. 530/02.	275	01/12/02	In chief
375.	1842	Yadi to issue P.M.Note of deceased Fatimabibi, Wife of Ganibhai Shaikh, P.M. Note bearing No. 609/02.	275	21/11/02	In chief
376.	1843	Yadi to issue P.M. Note of deceased Irfan Inayat Saiyad, P.M.Note bearing No. 489/02.	275	28/11/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
377.	1844	Yadi to issue P.M.Note of deceased Salman Inayat Saiyad, P.M.Note bearing No. 493/02.	275	26/11/02	In chief
378.	1845	Yadi to issue P.M. Note of deceased Ismailbhai Sarmoddin Shaikh, P.M.Note bearing No.567/02.	275	28/11/02	In chief
379.	1846	Yadi to issue P.M.Note of deceased Noorjahan, daughter of Kabirali Shaikh, P.M. Note bearing No.598/02.	275	16/12/02	In chief
380.	1847	Yadi to issue P.M.Note of deceased Hazrabanu @ Jadi Khala Abdul Rahim Saiyad, P.M. Note bearing No.619/02.	275	28/11/02	In chief
381.	1848	Yadi to issue P.M.Note of deceased Adamali Mohammadbhai Shaikh, P.M. Note bearing No.550/02.	275	01/12/02	In chief
382.	1849	Yadi to issue P.M.Note of deceased Nilofarbanu, daughter of Ibrahimbhai Mansuri, P.M. Note bearing No.542/02.	275	16/12/02	In chief
383.	1850	Yadi to issue P.M.Note of deceased Mohammad Shahrukh Nazirhussain Shaikh, P.M.Note bearing No. 592/02.	275	26/11/02	In chief
384.	1851	Arrest Memo of accused No.38.	275	26/09/02	In cross
385.	1855	Yadi to draw Inquest Panchnama of an unknown female aged about 35 years.	276	04/03/02	In chief
386.	1856	Panchnama of place of offence in I-C.R. No.179/02 of Naroda Police Station.	276	16/03/02	In chief
387.	1868	Seizure panchnama of Mobile Phone of motorala company presented by P.I. Shri S.M. Parmar in I- C.R. No. 238/02.	277	17/04/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
388.	1902	Statement of Bachalal Babubhai Chauhan. (only for the name of the witness).	278	10/06/02	In cross
389.	1903	Xerox Statement of Pappubhai Sabirbhai for signature only.	278	date illegible	In cross
390.	1942	P.M.Note of unknown female aged 40 years.	285	04/03/02	In chief
391.	1943	P.M.Note of unknown female aged 10 years.	285	02/03/02	In chief
392.	1944	Intimation of Police Surgeon for non-finding of case papers of P.M. Note No. 543/02.	285 100	15/03/10	In chief
393.	1945	P.M.Note of unknown male aged 10 years.	285	02/03/02	In chief
394.	1946	P.M.Note of unknown male aged 5 to 7 years.	285	01/03/02	In chief
395.	1947	P.M.Note of unknown female aged 5 years.	285	02/03/02	In chief
396.	1949	P.M.Note of unknown male aged 10 years.	285	06/03/02	In chief
397.	1951	P.M.Note of unknown male aged 10 years.	285	02/03/02	In chief
398.	1952	P.M.Note of unknown male aged 32 years.	285	02/03/02	In chief
399.	1953	P.M.Note of unknown male aged 10 years.	285	02/03/02	In chief
400.	1954	P.M.Note of unknown female aged 10 years.	285	02/03/02	In chief
401.	1961	P.M.Note of unknown male child aged 2 years.	285	02/03/02	In chief
402.	1962	P.M.Note of unknown female aged 40 years.	285	01/03/02	In chief
403.	1963	P.M.Note of unknown female aged 30 years.	285	01/03/02	In chief
404.	1964	P.M.Note of unknown male aged 15 years.	285	01/03/02	In chief
405.	1965	Injury Certificate of Mohammadmaru Raufalikhan Pathan (PW-191)	285	19/07/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
406.	1966	Injury Certificate of Shahrukh Shabbir (Kabirali Adambhai Shaikh) (through PW-181)	285	19/07/02	In chief
407.	1968	P.M.Note of unknown male. (As per police yadi -Ramsurat Babubhai Varma).	285	02/03/02	In chief
408.	1969	Yadi to issue P.M.Note of deceased Ramsurat Babubhai Varma. P.M.Note bearing No. 525/02.	285	17/08/02	In cross
409.	1976	Page No.1 to 84 and 8 x-ray plates of case papers including Injury Certificate of Mustaq Razzaq, (through PW-105) of V.S. Hospital.	286	20/03/02	In chief
410.	1979	Page No.1 to 96 of case papers and injury certificate of Mohammad Khalid Saiyadali, (PW-255).	287	01/03/02	In chief
411.	1987	Page No.1 to 8 and 1 x-ray plate of case papers and Injury Certificate of Abdul Majid Saiyadali. [Dropped PW-(No.14)]	289	01/03/02	By consent
412.	1990	Case papers and Injury Certificate of Pirmohammad Allabax, PW-165.	290	01/03/02	By consent
413.	1991	Case papers and Injury Certificate of Mohammad Hussain Shaikh. (PW-167)	290	01/03/02	By consent
414.	2004	Order of Police Commissioner, Ahmedabad to include I-C.R. 238/02 into Naroda Police Station I-C.R. No.100/02.	178	29/04/02	In chief
415.	2015	Affidavit of PW-294 in inquiry commission in S.C.No.270/09 (Page No. 2805/1 to 2805/19)	294	01/07/02	Admitted
416.	2020	P.M.Note of deceased Mohammadsafiq Adam Shaikh	47	01/03/02	In chief
417.	2021	Inquest panchnama of Mohammadsafi Adam Shaikh.	47	01/03/02	In cross
418.	2023	Case papers of	43	28/02/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Mohammadmaru Raufalikhan Pathan, PW-191 (page No.1 to 34).			
419.	2024	Letter of Police Surgeon, Civil for not finding the original treatment case papers of injured Shahrukh / Kabirali .	43	11/10/11	In chief
420.	2036	Panchnama of place of offence of I-C.R.No.117/02 of Naroda Police Station.	296	14/03/02	In chief
421.	2037	Panchnama of place of offence in I-C.R.No.130/02 of Naroda Police Station.	296	14/03/02	In chief
422.	2038	Panchnama of place of offence in I-C.R.No.162/02 of Naroda Police Station.	296	24/03/02	In chief
423.	2039	Panchnama of place of offence in I-C.R.No.184/02 of Naroda Police Station.	296	16/03/02	In chief
424.	2040	Panchnama of place of offence in I-C.R.No.185/02 of Naroda Police Station.	296	16/03/02	In chief
425.	2041	Panchnama regarding identification of dead bodies of Zarinabanu Bundubhai and Nasimbanu Bundubhai.	296	05/03/02	In chief
426.	2046	Panchnama of place of offence in I-C.R.No.115/02 of Naroda Police Station.	297	11/03/02	In chief
427.	2047	Panchnama of place of offence in case of I-C.R.No.129/02 of Naroda Police Station.	297	11/03/02	In chief
428.	2048	Panchnama of place of offence in case of I-C.R.No.153/02 of Naroda Police Station.	297	14/03/02	In chief
429.	2049	Permission to draw Inquest panchnama of two unknown male persons.	- -	01/03/02	By consent
430.	2050	Permission to draw Inquest Panchnama on dead bodies of one unknown child aged about 12 years and one unknown	- -	01/03/02	By consent

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		female aged about 30 years.			
431.	2051	Permission to draw Inquest panchnama on dead body of one Sahidabanu Ibrahim Shaikh.	- -	02/03/02	By consent
432.	2052	Permission to draw Inquest panchnama on dead body of one unknown male person aged 45 years.	- -	02/03/02	By consent
433.	2053	Permission to draw Inquest panchnama on dead body of Asif Sabbirbhai.	- -	04/03/02	By consent
434.	2054	Permission to draw Inquest panchnama of Sarmoddin Khalid Noor Mohammad.	- -	05/03/02	By consent
435.	2055	Permission to draw Inquest panchnama of Kudratbibi Khurshidbhai.	- -	05/03/02	By consent
436.	2056	Permission to draw Inquest panchnama of Sakina Babubhai Bhatti.	- -	10/03/02	By consent
437.	2057	Permission to draw Inquest panchnama of Razzak Babubhai Bhatti.	- -	11/03/02	By consent
438.	2060	Report made to the Executive Magistrate Court No.2 to get permission for drawing Inquest Panchnama regarding death of 58 persons.	- -	01/03/02	By consent
439.	2061	Permission to draw inquest panchnama of Sofiyabanu Majidbhai Shaikh.	- -	01/03/02	By consent
440.	2062	Inquest panchnama of deceased Sofiyabanu Majidbhai Shaikh.	- -	01/03/02	By consent
441.	2063	Permission to draw inquest panchnama of Jubedabanu Shabbirahmed Shaikh.	- -	01/03/02	By consent
442.	2064	Inquest panchnama of deceased Jubedabanu Shabbirahmed Shaikh.	- -	01/03/02	By consent
443.	2065	Yadi for Inquest panchnama of	- -	01/03/02	By

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		one unknown boy aged 10 years.			consent
444.	2066	Yadi to draw Inquest Panchnama on the dead body of one unknown male aged about 40 years,one unknown lady aged about 30 years and one human remains.	- -	02/03/02	By consent
445.	2067	Yadi for inquest panchnama of Supriya Marjid.	- -	07/03/02	By consent
446.	2068	Permission to draw inquest panchnama of Hamidraza Mohammadmaru.	- -	11/03/02	By consent
447.	2069	Inquest panchnama of accused, Gulabbhai Kalubhai Vanzara.	- -	28/02/02	By consent
448.	2070	Inquest panchnama of the dead body of the accused, Deepak Lalji Kori.	- -	28/02/02	By consent
449.	2071	Panchnama of seizure of the clothes worn by deceased Mohammad Safi Adam Shaikh.	- -	04/03/02	By consent
450.	2074	Yadi to draw Inquest panchnama of Sakinabanu Mehmudbhai.	- -	04/03/02	By consent
451.	2075	Inquest panchnama of dead body of Sakina Mehmudbhai.	- -	04/03/02	By consent
452.	2100	Order for study leave of Mr. Dhananjay Dwivedi, Add. Secretary.	- -	01/07/10	By order
453.	2107	Sanction by Government of Gujarat for the prosecution of Accused No.1 to 22.	303	30/05/02	In chief
454.	2108	Letter written to Home Department for sanction.	303	22/05/02	In cross
455.	2109	Letter written to Secretary, Home Department for sanction.	303	26/05/02	In cross
456.	2110	Letter written to Secretary, Home Department for sanction.	303	27/05/02	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
457.	2112	Sanction to prosecute. (A-23 to A-30)	304	17/08/02	In chief
458.	2115	Sanction to prosecute. (A-33)	305	13/02/08	In chief
459.	2116	Sanction to prosecute. (A-45 to A-59)	305	10/12/08	In chief
460.	2117	Sanction to prosecute. (A-33)	305	01/04/09	In chief
461.	2119	Sanction to prosecute. (A-38 to A-40)	306	01/09/04	In chief
462.	2120	Sanction by Government of Gujarat for the prosecution of Accused No.41 to 44	306	17/01/05	In chief
463.	2128	Order of Police Commissioner, Ahmedabad to include 25 I-C.R.s in Naroda Police Station I-C.R.No.100/02.	307	01/05/02	In chief
464.	2129	Discovery Panchnama of container (kerbo) of kerosene from the accused, Ratilal @ Jaybhavani (deceased).	307	13/05/02	In chief
465.	2130	Discovery Panchnama of seizure of weapon (dhariya) by deceased accused - Mukesh @ Guddu Jivanlal Chhara.	307	06/06/02	In chief
466.	2131	Yadi to issue P.M. Note of deceased Saeedabanu and deceased Abedabibi P.M.Note No.497/02 and 574/02.	307	16/08/02	By consent
467.	2132	Yadi to issue P.M. Note of deceased (1)Mohammad Masaq Qureshi, (2)Salam Abdulla Qureshi, (3)Reshma Salambhai Qureshi, (4)Sameer Salambhai Qureshi, (5)Imran Salambhai Qureshi, (6) Meraj Salambhai Qureshi. P.M. Notes bearing No. (1) 576.02, (2) 511/02, (3) 422/02, (4) 434/02, (5) 423/02, (6) 517/02.	307	14/06/02	By consent
468.	2133	Yadi to issue P.M. Note of deceased (1) Zarinabibi w/o.	307	01/11/02	By consent

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Bundubhai Mohammad Siddique Qureshi, (2) Nasimbanu, D/o. Bundubhai Mohammad Siddique Qureshi - P.M.Notes No.426/02 and 545/02.			
469.	2134	Yadi to issue P.M.Note of deceased (1) Siddique Salimbhai, (2) Sharif Iqbalbhai Shaikh bearing P.M. Notes No. 425/02 and 424/02	307	20/07/02	By consent
470.	2135	Yadi to issue P.M.Note of deceased Shabnambanu wife of Mohammad Khurshid Mohammednasim Shaikh, P.M.Notes bearing No. 519/02.	307	31/10/02	By consent
471.	2136	Yadi to issue P.M.Note of deceased (1) Mohammadhussain Abdulmajid Shaikh, (2) Khwajahussain Abdulmajid Shaikh, (3) Shahinbanu Abdulmajid Shaikh, P.M.Notes bearing No.528/02, 494/02, 541/02.	307	23/07/02	By consent
472.	2137	Yadi to issue P.M.Note of deceased Shabbirahmed Khurshidahmed Shaikh, P.M. Note bearing No.543/02	307	11/11/02	By consent
473.	2138	Yadi to issue P.M.Note of deceased Mohammadaiyub Allabaksh Shaikh, P.M.Note bearing No.544/02	307	09/10/02	By consent
474.	2139	Yadi to issue P.M.Note of deceased (1) Abdulwahab Abdulrashid Shaikh, (2) Hanifakhatun, wife of Abdulwahab Shaikh P.M.Notes bearing No.495/02 and 535/02.	307	29/07/02	By consent
475.	2140	Yadi to issue P.M.Note of deceased Abdula Abdulgani Shaikh, P.M.Note bearing No. 539/02.	307	11/11/02	By consent
476.	2141	Yadi to issue P.M.Note of	307	14/08/02	By

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		deceased Sohail Ahmed, S/o. Aiyubbhai Ladesha Qureshi, P.M. Note bearing No. 520/02			consent
477.	2142	Yadi to issue P.M.Note of deceased Zarinabanu, D/o. Rehmanbhai Saiyad, P.M. Note bearing No.526/02.	307	14/08/02	By consent
478.	2143	Yadi to issue P.M. Note of deceased (1) Saminabanu, D/o. Shabbirahmed Shaikh (2) Nadeem, S/o. Shabbirahmed Khurshidahmed Shaikh P.M. Notes bearing No. 492/02 and 512/02	307	11/11/02	By consent
479.	2144	Yadi to issue P.M.Note of deceased Mayuddin, S/o. Hasanbhai Abubakar Saiyad, P.M. Note bearing No.515/02	307	14/09/02	By consent
480.	2145	Yadi to issue P.M.Note of deceased (1) Kausharbanu D/o. Khalikbhai Noormohammad Shaikh (2) Noorjahan, W/o. Ismailbhai Shaikh P.M.Notes bearing No. 575/02 and 516/02	307	13/08/02	By consent
481.	2146	Yadi to issue P.M.Note of deceased Saliyabibi w/o. Jenulabedin Shaikh, P.M. Note bearing No.522/02.	307	13/08/02	By consent
482.	2147	Yadi to issue P.M.Note of deceased (1) Bilkisbanu W/o. Mohammadmaruf Pathan, (2) Kherunnisha, D/o. Mohammadmaruf Pathan P.M.Notes bearing No.524/02 and 523/02	307	23/07/02	By consent
483.	2148	Yadi to issue P.M.Note of deceased Mohammadyunus Mohammadrazzaq Ansari P.M.Note bearing No. 533/02	307	16/08/02	By consent
484.	2149	Yadi to issue P.M.Note of deceased Noorjahan, wife of Mohammadhussain Shaikh P.M.Note bearing No.536/02	307	16/08/02	By consent

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
485.	2150	Yadi to issue P.M.Note of deceased Mohsin Maheblahussain Shaikh, P.M. Note bearing No. 490/02	307	16/08/02	By consent
486.	2151	Yadi to issue P.M.Note of deceased Salimabanu Sardarali Kasamali Saiyad, P.M.Note bearing No. 538/02.	307	16/08/02	By consent
487.	2152	Yadi to issue P.M.Note of deceased (1) Wasim, s/o. Abdulaziz Shaikh (2) Salim s/o.Abdulaziz Shaikh, (3) Gulnazbanu @ Nagma Aiyubmiya Malek, P.M. Notes bearing No.568/02, 438/02, 590/02.	307	15/07/02	By consent
488.	2153	Yadi to issue P.M.Note of deceased Mohammad Hussain Abdulkadar Qureshi, P.M.Note bearing No.540/02.	307	11/11/02	By consent
489.	2154	Yadi to issue P.M.Note of deceased Sarmoddin Mohammad Munavar Shaikh, P.M. Note bearing No.599/02	307	14/11/02	By consent
490.	2155	Yadi to issue P.M.Note of deceased Subhan, s/o. Zenulabedin Shaikh P.M. Note bearing No. 578/02.	307	24/10/02	By consent
491.	2156	Yadi to issue P.M.Note of deceased Abdulkadir Abdulrashid Shaikh, P.M. Note bearing No.579/02.	307	09/10/02	By consent
492.	2157	Yadi to issue P.M.Note of deceased Mehboob Abdulmajid Shaikh, P.M.Note bearing No.531/02.	307	24/10/02	By consent
493.	2158	Yadi to issue P.M.Note of deceased Sufiyabegam Abdulahad Abdulrahim Luhari, P.M. Note bearing No. 546/02.	307	16/08/02	By consent
494.	2159	Yadi to issue P.M. Note of deceased Firoz Mohammadaiyub Shaikh, P.M.	307	02/11/02	By consent

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Note bearing No. 591/02.			
495.	2160	Yadi to issue P.M.Note of deceased Muskan, daughter of Zenulabedin Shaikh, P.M. Note bearing No.491/02.	307	04/10/02	By consent
496.	2161	Yadi to issue P.M.Note of deceased Abidali Hamidali Pathan, P.M.Note bearing No. 573/02.	307	14/11/02	By consent
497.	2162	Yadi to issue P.M. Note of deceased (1) Kudratbibi, wife of Khurshidahmed Chandasa, (2) Asif Shabbirbhai Shaikh, P.M.Notes bearing No.627/02 and 628/02.	307	27/08/02	By consent
498.	2163	Yadi to issue P.M.Note of deceased Sufiyabanu @ Supriya Abdul Majid Shaikh, P.M.Note bearing No.641/02.	307	26/08/02	By consent
499.	2184	Sanction to prosecute. [A-34 to A-37 (A-35 abated)]	309	20/04/09	In chief
500.	2185	Sanction to prosecute. [A-60 to A-62]	309	11/08/09	In chief
501.	2186	Order to reject sanction. [A-32]	309	01/04/09	In chief
502.	2189	Letter of PW-327 to Vidhan Sabha.	310	16/12/08	In chief
503.	2190	Details given by Gujarat Vidhan Sabha.	310	23/12/08	In chief
504.	2192	Letter for call details and print out of Mobile Phone of accused (1) Babu Bajrangi (2) Mayaben Kodnani (3) Raju Chaumal (4) Kishan Korani (5) Kirpalsinh (6) Bipin Panchal from 27/02/2002 to 04/03/2002 (A-18, 24, 37, 44, 20, 62)	311	05/01/10	In chief
505.	2193	Print out of analysis and call details of mobile phone No. 98250 20333 of the accused, Babu Bajrangi (Total 38 pages) [A-18]	311	27/02/02 to 04/03/02	In chief
506.	2194	Print out of analysis and call	311	27/02/02	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		details of mobile phone No. 98250 06729 of the accused, Mayaben Kodnani (Total 44 pages) [A-37)		to 04/03/02	
507.	2195	Print out of analysis and call details of mobile phone No. 079-2830678 of the accused, Raju Chaumal, A-24 (Total 6 pages)	311	27/02/02 to 04/03/02	In chief
508.	2196	Print out of analysis and call details of mobile phone No. 079-2818316 of the accused, Kishan Korani, A-20 (Total 6 pages)	311	27/02/02 to 04/03/02	In chief
509.	2197	Print out of analysis and call details of mobile phone No. 98250 74044 and Residence Telephone No.22822082 of the accused, Kirpalsinh, A-62 (Total 19 pages)	311	27/02/02 to 04/03/02	In chief
510.	2198	Print out of analysis and call details of mobile phone No. 98240 85556 of the accused, Bipin Panchal, A-44 (Total 18 pages)	311	27/02/02 to 04/03/02	In chief
511.	2201	Original Yadi by I.O. to Navrangpura PS for muddamal receipt of seal packed CD of the voice samples of the accused.	312	07/04/10	In chief
512.	2202	Muddamal receipt of the sealed pack CD of the voice samples of the accused (Navrangpura Police Station)	312	07/04/10	In chief
513.	2203	Panchnama of the sealed C.D. of the voice samples taken by Akashwani, Ahmedabad.	- -	07/04/10	By consent
514.	2213	Letter of Station Director, Akashwani, Ahmedabad to Competent Officer for taking voice samples of the accused.	314	08/03/10	In chief
515.	2214	Letter to I.O. by Station Director, Akashwani,	314	30/03/10	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Ahmedabad for recording voice samples of three accused.			
516.	2215	Order for permission for sample recording from Prasar Bharati	314	05/05/10	In cross
517.	2216	Order for permission for sample recording from Prasar Bharati	314	24/29-09-09	In cross
518.	2218	Pursis of Dy.S.O. to produce ten books for Session of Legislative Assembly	310	30/11/11	By order
519.	2219	Letter of Mr.M.M.Parikh, Under Secretary, Legislative Assembly.	310	29/11/11	By order
520.	2221 & 2222	Two maps of the place of offence.	315	12/01/11 03/05/11	In chief
521.	2223	Forwarding letter of DILR to send the maps of place of offence.	315	12/01/11	In chief
522.	2224	Yadi written to D.I.L.R., Ahmedabad by I.O.	315	13/10/10	In cross
523.	2227	Letter by A.C.P. Crime Branch, Ahmedabad to Cell Force for mobile call details	316	08/05/02	In cross
524.	2241	Letter of I.O. Mr. Mal to I.O. of this case to send C.D. of Mobile Call Details.	318	21/11/09	In chief
525.	2242 (Joint)	Original letter from IO of Naroda I-CR No.98/02 to IO of Naroda I-CR No.100/02 while sending the certified copy of analysis report of FSL, Gandhinagar of the C.D. of Mobile/Land line telephones and 11 pages of FSL Report.	318	27/03/10	In chief
526.	2243	Document of page No.2795 of charge-sheet in S.C.No. 270/09 (letter written by P.L. Mal to V.V. CHaudhary , IO Sit.)	318	05/12/08	In cross
527.	2244	Document of page No. 2719/1	318	28/02/02	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		to 2791/12 of charge-sheet in S.C.No.270/09 (Mobile phone details of accused No.37, Mobile No. 9825006729)			
528.	2258	Letter of C.B.I. to F.S.L., Jaipur.	320	11/12/08	In chief
529.	2259	Receipt of analysis report (page 1 to 138) of F.S.L. Jaipur.	320	09/02/09	In chief
530.	2273	Letter of Tehelka Magazine for appointment of Mr.Ashish Khetan.	322	07/10/06	In cross
531.	2275	Receipt of FSL, Jaipur.	323	23/04/10	In chief
532.	2276	Letter of FSL, Jaipur to SIT with FSL Report.	323	28/10/10	In chief
533.	2277	Forwarding letter of sending sealed C.D. of voice sample for analysis report to F.S.L., Jaipur (Rajasthan)	323	9-14/4/10	In cross
534.	2282	Burial receipt issued by Julaiwada Masjidi Committee of deceased Abdulkadar Abdulrasul Anuri.	325	03/03/02	In chief
535.	2288	Yadi to add names in P.M. Note No.512/02, 518/02, 534/02, 574/02, 565/02 and 577/02.	327	18/05/08	In chief
536.	2289	Application by Khwajahussain Mohammadhussain Shaikh to SIT.[Dropped PW(No.204)]	327	17/04/08	In chief
537.	2290	Application by PW-142, Jannatbanu Kallubhai Shaikh to SIT.	327	17/04/08	In chief
538.	2291	Application by PW-229, Sayrabanu Khwaja Hussain Shaikh to SIT.	327	17/04/08	In chief
539.	2292	Application by PW-166, Sahinbanu Mohammad Hussain Qureshi to SIT.	327	19/04/08	In chief
540.	2293	Application by PW-326, Jubedabanu Abudlla Shaikh to SIT.	327	19/04/08	In chief
541.	2294	Application by Fatmabibi Khwajahussain Shaikh to SIT.	327	19/04/08	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		[Dropped PW (No.70)]			
542.	2295	Application by Hussain Hamidalikhan Pathan to SIT. [Dropped PW (No.145)]	327	19/04/08	In chief
543.	2296	Application by Muzafarbeg Bahadurbeg Mirza to SIT. [Dropped PW (No.88)]	327	19/04/08	In chief
544.	2297	Application by PW-193, Ibrahimbhai Hasanbhai Shaikh to SIT.	327	19/04/08	In chief
545.	2298	Application by PW-179, Nasimbanu Abdulrehman Shaikh to SIT.	327	19/04/08	In chief
546.	2299	Application by PW-138, Mohammadbhai Abdulhamid Shaikh to SIT.	327	19/04/08	In chief
547.	2300	Application by Mumtazbanu Rahematulla Shaikh to SIT. [Dropped PW (No.146)]	327	19/04/08	In chief
548.	2301	Application by Farukbhai Fajrubhai Shaikh to SIT. [Dropped PW (No.81)]	327	22/04/08	In chief
549.	2302	Application by PW-199, Noor Mohammad Nazir Mohammad to the Chairman, SIT to record their statement.	327	07/05/08	In chief
550.	2303	Application by PW-324, Nasimbanu Kalimudin Qureshi to SIT.	327	07/05/08	In chief
551.	2304	Application by Mohammad Saeed Abdulmajid Khadkhad to SIT. [Died as per report Exh. 495]	327	14/05/08	In chief
552.	2305	Application by PW-234, Mohammadyunus Basirahmed Shaikh to SIT.	327	14/05/08	In chief
553.	2306	Application by PW-175, Yakubali Kasamali Saiyad to SIT.	327	21/05/08	In chief
554.	2307	Application by PW-41, Allaudin Adambhai Mansuri to SIT.	327	02/06/08	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
555.	2308	Application by Yusufbhai Daudbhai Mansuri to SIT. [Dropped PW (No.170)]	327	02/06/08	In chief
556.	2309	Application by Khillubhai Gafurbhai Siddiqui (Maniyar) to SIT. [Died as per report Exh. 697]	327	05/06/08	In chief
557.	2310	Application by Nasimbanu Kalimuddin Qureshi (PW-324) to SIT.	327	05/06/08	In chief
558.	2311	Application by Ahmedbhai Kalubhai Khalifa (PW-107) to SIT.	327	07/06/08	In chief
559.	2312	Application by PW-201, Satarbhai Mohammadhussain Shaikh to SIT.	327	16/06/08	In chief
560.	2313	Application by Akhtarali Shahdulla Saiyad to SIT. [Dropped PW (No.147)]	327	07/06/08	In chief
561.	2314	Application by Kalumiya Motimiya Chauhan to SIT. [Died as per report Exh. 697]	327	25/05/08	In chief
562.	2315	Application by PW-177, Isratjaha Parvezhussain to SIT.	327	23/05/08	In chief
563.	2316	Application by PW-245, Nadim Mohammadali Saiyad to SIT.	327	29/05/08	In chief
564.	2319	Letter of SIT to Director, Akashwani for taking voice samples of accused.	327	05/03/10	In chief
565.	2320	Report of Police Constable, Rajesh Sharma, Buckle No. 3490 to I.O..	327	30/10/10	In chief
566.	2321	Letter of P.I., SIT to Dy.S.P., Crime Branch, Ahmedabad City, for taking voice sample of accused.	327	30/10/10	In chief
567.	2322	Letter of PW-327 to Chief Officer, Danapith Fire Station, Ahmedabad.	327	28/04/08	In chief
568.	2323	Letter of PW-327 to Chief Officer, Danapith Fire Station, Ahmedabad.	327	29/07/08	In chief

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
569.	2324	Letter of Add. Chief Fire Officer to PW-327 to Dy. Police Commissioner.	327	02/08/08	In chief
570.	2330	Copy of fax message to PW-327.	327	09/04/08	In cross
571.	2331	The order issued by SIT to Mr.V.V. Chaudhary (PW-327).	327	11/04/08	In cross
572.	2332	Notification issued by Home Deptt. Gujarat State for constitution of SIT.	327	01/04/08	In cross
573.	2333	Charge-sheet in S.C.No.242/09 (Page No. 7 to 45) from the record of Trial Court.	327	15/02/08	In cross
574.	2334	Charge-sheet in S.C.No.243/09 (Page No. 7 to 45) from the record of Trial Court.	327	01/05/09	In cross
575.	2340	List by PW-327 showing the statements recorded by him.	327	30/12/11	In cross
576.	2341	Certified copy of burial receipt of Julaivada Masjidi Committee of deceased Kausharbanu Khalikbhai Shaikh from page No.711 of pursis Exh.767 alongwith charge-sheet.	327	04/03/02	In cross
577.	2342	Certified copy of Page No.1 to 44 of file received from BSNL for land line telephone No. 22830678.	327	from 23/02/04	In cross
578.	2343	Certified copy of Page No.1 to 44 of file received from BSNL for land line telephone No. 02818316.	327	from 04/01/71	In cross
579.	2344	One C.D. as well as album photograph containing total 40 photographs of place of offence.	327		In cross
580.	2349	Yadi of SIT showing list of accused of their tenure.	327	02/01/12	In cross
581.	2351	Total five page of yadi of P.M. and inquest.	327	02/01/12	In cross
582.	2352	True copy of burial receipt No. 992 of deceased Aafrinbanu	327	04/03/02	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		Majidbhai Shaikh.			
583.	2353	True copy of burial receipt No. 970 of deceased Tarkasbibi Abdulgani Shaikh.	327	03/03/02	In cross
584.	2354	Copy of burial receipt No.1017 of deceased Kadarji @ Arfinbanu Mahebubhasan Shaikh as well as xerox of affidavit of Meblahussain Munirahmed Shaikh.	327	04/03/02 affidavit 02/12/02	In cross
585.	2355	Burial receipt No.998 of deceased Maheboobbibi Vasumiya Shaikh and xerox of affidavit of Mohammad Hussain Munirahmed Shaikh.	327	04/03/02 affidavit 02/12/02	In cross
586.	2356	True copy of burial receipt No. 1041 of deceased Jenabbibi Khalikbhai Shaikh.	327	04/03/02	In cross
587.	2357	True copy of burial receipt No. 1010 of deceased Rabiyabibi Rahimbhai Shaikh.	327	04/03/02	In cross
588.	2358	Copy of burial receipt No.994 of deceased Mumtazbanu Mohammadbhai Shaikh.	327	04/03/02	In cross
589.	2359	Xerox copy of burial receipt No.971 of deceased Kalimuddin Ahmedbhai Qureshi	327	03/03/02	In cross
590.	2360	True copy of burial receipt No. 1024 of deceased Ismailbhai Punjabhai Mansuri	327	04/03/02	In cross
591.	2361	True copy of burial receipt No. 975 of deceased Reshmabanu Iqbalahmed Shaikh	327	04/03/02	In cross
592.	2362	Letter to Mr. J.S.Gedam, P.S.I. by I.O. Mr. V.V. Chaudhary for the print out of mobile call details of the accused (1) Babu Bajrangi, (2) Maya Kodnani, (3) Raju Chaumal (4) Kishan Korani, (5) Kirpalsinh and (6) Bipin Panchal between 27/02/2002 and 04/03/2002.	327	09/12/09	In cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
		[A-18, 24, 37, 44, 20 and 62]			
593.	2363	F.I.R. of Naroda I-C.R.No. 177/02, Hasambhai Abubakar Saiyad.	327	14/03/02	In cross
594.	2385	Original Witness Summons of Ramesh Chhara as per Section 160 of Cr.P.C. (A-47)	327	23/08/08	In cross
595.	2386	Carbon Copy of Original Witness Summons of Ramesh Chhara (A-47) as per Section 160 of Cr.P.C.	327	23/08/08	In cross
596.	2387	Original Witness Summons of Ramesh Keshavlal Didawala (Chhara) (A-47) as per Section 160 of Cr.P.C.	327	14/09/08	In cross
597.	2388	Carbon Copy of Original Witness Summons of Ramesh Keshavlal Didawala (Chhara) (A-47) as per Section 160 of Cr.P.C.	327	14/09/08	In cross
598.	2389	Letter from Vodafone to the S.P., SIT regarding name of holder of four Mobile Phones.	327	14/12/11	In cross
599.	2390	Letter from IDEA Cellular Ltd. to I.O. SIT regarding mobile No.9824085556	327	28/12/11	In cross
600.	2617	F.S.L. Site Observation Report	- -	26/04/02	By consent

(14) Most of the prosecution witnesses were cross- examined at length. The cross-examination of the PWs was based on the defence of denial, probability of the version of the witness, lack of credibility in the version of the witnesses, impeachment of the witnesses, challenging the veracity of the witnesses, claiming false involvement of the accused, fabrication of the prosecution case to settle personal score against the accused etc. The defence has not examined any of the witnesses as

defence witness.

G. List of Documents (Defence) :

(15) During the course of the cross-examination of different witnesses, following documents have been brought on record by defence from the documents produced by the prosecution on demand of the defence, produced by defence or the defence has taken from the custody of P.W. who was not called upon with the said documents by the P.P.

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remark
1	142	Complaint page No. 9 & 10 of charge-sheet (Naroda I-C.R.No. 111/02) of Mehmoodbhai Abbasbhai Bagdadi.	1	07/03/02	In Cross
2	384	Panchnama of place of offence in I-C.R. No.161/02 of Naroda Police Station.	45	24/03/02	In Cross (by consent)
3	598	Marnottar Form (Police Report) of unknown dead body.	97	01/03/02	In Cross
4	607	Marnottar Form of unknown male.	98	01/03/02	In Cross
5	608	Marnottar Form of unknown male child.	98	01/03/02	In Cross
6	609	Marnottar Form of unknown male child.	98	01/03/02	In Cross
7	610	Marnottar Form of unknown male.	98	01/03/02	In Cross
8	611	Marnottar Form of one unknown male.	98	01/03/02	In Cross
9	699	Application and Loss/Damages Form from the charge-sheet of Trial Court's record submitted vide pursis Exh.47.	107	06/03/02	In Cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remark
10	725	Page Nos. 223 & 224 of charge-sheet papers of Trial Court's record produced vide pursis Exh.47.	113	06/03/02	In Cross (by consent)
11	742	Page Nos. 10 to 13 of Affidavit in charge-sheet papers produced vide pursis Exh.739.	114	15/11/03	In Cross (by consent)
12	765	Marnottar Form (Police Report) of Mehboob Khurshidbhai Shaikh and Receipt along with it.	119	05/03/02	In Cross
13	838	D.D. of Shahjahan Kabirahmed Shaikh (PW-161).	130	03/03/02	In Cross
14	839	D.D. of Shabbir Ahmed Munir Ahmed Shaikh (PW-159).	130	03/03/02	In Cross
15	840	D.D. of Farzanabanu Aiyubkhan (PW-106).	130	03/03/02	In Cross
16	841	D.D. of Naimuddin Ibrahimbhai Shaikh (PW-158).	130	03/03/02	In Cross
17	842	D.D of Mohammadmaru Alikhan Pathan (PW-191).	130	03/03/02	In Cross
18	843	D.D. of Sabera Abdulaziz Shaikh (PW-214).	130	03/03/02	In Cross
19	844	D.D. of Usmanbhai Valibhai Mansuri (PW-163).	130	03/03/02	In Cross
20	845	D.D. of Yasin Usmanbhai Mansuri (PW-164).	130	03/03/02	In Cross
21	846	D.D. of Sufiyabanu Inayatali Saiyad.	130	03/03/02	In Cross
22	847	D.D. of Afsana Rehmanbhai Saiyad (PW-160).	130	03/03/02	In Cross
23	888	Panchnama of place of offence and seizure of burnt ashes & control sample mud from that place in I-C.R.No.238/02 of Naroda Police Station.	135	15/04/02	In Cross
24	904	Statement of PW-136.	136	27/03/02	In Cross
25	920	Affidavit at Page Nos.14 to 17 in Transfer Application to be kept with charge sheet produced vide pursis Exh.739.	137	15/11/03	In Cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remark
26	952	Panchnama of Rickshaw No.GJ-1-TT-440.	140	13/06/02	In Cross
27	960	Affidavit at Page Nos.18 to 20 in transfer application kept with charge-sheet produced vide pursis Exh.739.	141	14/11/03	In Cross
28	976	Page Nos.1 to 5 of Misc. Criminal Application No. 2015/09 in Cr.M.A.No. 1943/2009 before Hon'ble High Court of Gujarat.	143	18/02/09	In Cross
29	981	Page No.1 to 25 of Trial Court application u/s. 173 (8)	143	17/06/09	In Cross
30	982	FIR of I-C.R.No.100/02 and panchnama.	143		In Cross
31	1017	Affidavit page Nos.21 to 26 of Trial Court record kept with charge sheet produced vide pursis Exh.739 in transfer petition.	147	17/11/03	In Cross
32	1036	Panchnama of loss / damage to house of PW-149.	149	14/05/02	In Cross
33	1055	Panchnama of loss / damage to house of PW-143.	143	09/05/02	In Cross
34	1056	Certified copy of Criminal Misc. Application No.650/10 along with order.	143	25/02/10 09/04/10	In Cross
35	1066	Copy of D.D. of PW-154, Ahmed Badshah, page No.967 of trial record.	154	04/03/02	In Cross
36	1082	Panchnama of loss and damages of house of PW-156 through pursis, Exh.1081.	156	08/05/02	In Cross
37	1083	Panchnama of loss and damages of the house of PW-156 vide pursis Exh.1081.	156	08/05/02	In Cross
38	1094	Affidavit in Transfer Petition by PW-156.	156	09/11/03	In Cross
39	1095	Application to Witness Protection Cell, SIT by PW-156.	156	04/11/09	In Cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remark
40	1192	Printed complaint-application of Mohammad Nasir Shaikh Buddhu Shaikh along with loss/damage form.	173	06/03/02	In Cross
41	1261	Printed complaint-application as well as loss-damage/analysis form of PW-182 Bhikhabhai Habibbhai Mansuri – page 1 to 4 (through pursis Exh.1260).	182	07/03/02	In Cross
42	1283	Printed complaint of Ibrahim Daudbhai Mansuri.	188	19/03/02	In Cross (by consent)
43	1390	Printed complaint-application as well as loss-damage analysis form of PW-201, Sattarbhai Mohammad Hussain Shaikh - Page 1 to 4.	201	06/03/02	In cross
44	1412	Printed complaint-application as well as loss-damage analysis form of PW-204, Abdulrazzaq Abdulrehman Saiyad - page 1 to 4. (Lt. Guddu, Lt. Bhavani, A-41, A-44, A-22, A-25)	204	05/03/02	In Cross
45	1428	Yadi of Naroda Police Station to the Magistrate with arrest memo of the accused to be kept in custody.	200	03/03/02	In Cross
46	1531	Original panchnama of loss-damage caused to the house of PW-213, Hasibkhan Achhankhan Pathan by pursis.	213	17/07/02	In Cross
47	1616	Printed complaint-application as well as loss-damage/analysis form of PW-227, Zulerkhan Islamkhan Pathan (Page 1 to 4) by pursis.	227	06/03/02	In Cross
48	1774	Card of Shanti Samiti of A-20 issued by Naroda Police Station	262	- - -	In Cross
49	1786	Page No.915 to 927 of Log Book of Naroda-1.	266	27/02/02 to 01/03/02	In Cross

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remark
50	1799	Page No.1096 of entry No.12 of Vardhi Register.	268	28/02/02	In Cross

H. List of Documents (By Court) :

(16) The following documents were taken on record by Court during the deposition of witnesses and by the order of the Court.

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
1	187	Specimen Signature of PW-17	17	16/11/09	By Court
2	780	Death report of Supriya Marjid	121	- - -	By Court
3	848	Summons served to PW-130	130	- - -	By Court
4	1496	F.S.L. 'Ravangi' letter.		23/07/02	By order of Court u/s. 293 of Cr.P.C.
	1496	Receipt regarding receiving the muddamal from F.S.L. bearing No.FSL/TPN/2002/B/775.		05/08/02	By order of Court u/s. 293 of Cr.P.C.
	1496	Forwarding letter of F.S.L. No. FSL/TPN/2002/B/775 with reference to muddamal.		26/11/02	By order of Court u/s. 293 of Cr.P.C.
	1496	Analysis Report of F.S.L. bearing No. FSL/TPN/2002/B/775		26/11/02	By order of Court u/s. 293 of Cr.P.C.
	1496	Analysis Report No.FSL/TPN/2002/B/775 of Cerological Deptt. of F.S.L.		25/11/02	By order of Court u/s. 293 of Cr.P.C.

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
5	1497	Note of F.S.L. Ravangi.		13/10/04	By order of Court u/s. 293 of Cr.P.C.
	1497	Receipt regarding receiving the Muddamal to F.S.L. bearing No.FSL/TPN/2002/04/B/867.		13/10/04	By order of Court u/s. 293 of Cr.P.C.
	1497	Forwarding letter No.FSL/TPN/2002/04/B/867 of Analysis Report of F.S.L.		04/11/04	By order of Court u/s. 293 of Cr.P.C.
	1497	Analysis Report of F.S.L. bearing No. FSL/TPN/2002/04/B/867.		03/11/04	By order of Court u/s. 293 of Cr.P.C.
	1497	Analysis Report No.FSL/TPN/2002/B/867 of Cerological Deptt. of F.S.L.		02/11/04	By order of Court u/s. 293 of Cr.P.C.
6	1498	Yadi to C.M.O., Civil Hospital, Ahmedabad for blood samples, D.N.A. Profile etc.		12/06/02	By order of Court u/s. 293 of Cr.P.C.
	1498	Yadi to F.S.L. for D.N.A. profile of relatives.		12/06/02	By order of Court u/s. 293 of Cr.P.C.
	1498	Receipt bearing No.FSL/TPN/2002/DNA/48 of receiving the samples of DNA profiles by F.S.L.		12/06/02	By order of Court u/s. 293 of Cr.P.C.
	1498	Note of 'Ravangi' for DNA Profiles.		- - -	By order of Court u/s. 293 of Cr.P.C.
	1498	Receipt bearing No.FSL/TPN/2002/ DNA/8 of receiving the samples of DNA profiles by F.S.L.		22/03/02	By order of Court u/s. 293 of Cr.P.C.

Sr. No.	Exh. of Doc.	Description of Document	by which PW	Date	Remarks
	1498	Forwarding letter of F.S.L. for analysis of DNA.		15/11/03	By order of Court u/s. 293 of Cr.P.C.
	1498	Analysis report of DNA Deptt. of F.S.L.		15/11/03	By order of Court u/s. 293 of Cr.P.C.
7	1617	Specimen Signature of PW-227	227	06/06/11	By Court
8	2083	Forwarding Letter of Dy.S.P., Mr. K.K. Mysorewala.	274	18/10/11	By order
9	2084	Copy of F.I.R. of I-C.R.No. 96/02 of Naroda Police Station	274	27/02/02	By order
10	2085	Copy of F.I.R. of I-C.R.No. 97/02 of Naroda Police Station	274	28/02/02	By order
11	2391	Letter of Indian Oil Corporation to SIT about information regarding F.I.R. 100/02, about Cylinder in Uday Gas Agency.	327	21/10/08	By Court
12	2392	Letter from Mr.V.V.Chaudhary, I.O., S.I.T. to Chief Area Manager regarding getting the information of Uday Gas Agency.	327	21/06/08	By Court

I. Documents Alongwith F.S. :

(17) After completion of the trial, Further Statements of all the accused were recorded, where the accused have disowned the prosecution case, denied the prosecution case, claimed their ignorance on the evidence led by the prosecution and have challenged the truth in the version of the prosecution witnesses. Some of the accused have tendered their written specific statement with supporting documents, the account of which is as under.

Sr. No.	Description of documents or pursis produced by the accused.	Date	Exh	Produced by which Accused
1	Written Statement of the accused No.1 in reply to F.S.	25/01/2012	2554	A-1
2	Written Statement of the accused No.2 in reply to F.S.	23/01/2012	2418	A-2
3	Certificate of Shanti Samiti issued by Sardarnagar Police Station.	- - -	2420	A-2
4	Written Statement of the accused No.3 in reply to F.S.	25/01/2012	2538	A-3
5	Certified copy of complaint – I.C.R.No. 699/2000	- - -	2539	A-3
6	Xerox of cutting of press-note regarding the incident of theft in the house of accused	18/12/2000	2540	A-3
7	Certified copy of complaint lodged by the accused	15/02/2002	2541	A-3
8	Xerox copy of the identity card issued by Election Commission.	- - -	2542	A-3
9	Appointment letter by Yuva Congress as Vice President.	- - -	2543	A-3
10	Paper cutting for congratulation for appointing by Yuva Congress	21/08/1999	2544	A-3
11	Copy of order of Criminal Misc. Application No.477/02	- - -	2545	A-3
12	Written Statement of the accused No.4 in reply to F.S.	25/01/2012	2546	A-4
13	Written Statement of the accused No.5 in reply to F.S.	23/01/2012	2421	A-5
14	Written Statement of the accused No.6 in reply to F.S.	23/01/2012	2422	A-6
15	Written Statement of the accused No.7 in reply to F.S.	23/01/2012	2423	A-7
16	Written Statement of the accused No.8 in reply to F.S.	23/01/2012	2424	A-8
17	Written Statement of the accused No.9 in reply to F.S.	23/01/2012	2425	A-9
18	Written Statement of the accused No.10 in reply to F.S.	25/01/2012	2548	A-10
19	Written Statement of the accused No.11 in reply to F.S.	23/01/2012	2426	A-11

Sr. No.	Description of documents or pursis produced by the accused.	Date	Exh	Produced by which Accused
20	The pursis filed by accused No.12, 57 and 60 about not willing to give their Written Statement in reply to F.S.	25/01/2012	2553	A-12, A-57 and A-60.
21	Written Statement of the accused No.13 in reply to F.S.	23/01/2012	2427	A-13
22	Written Statement of the accused No.14 in reply to F.S.	23/01/2012	2428	A-14
23	Written Statement of the accused No.15 in reply to F.S.	23/01/2012	2429	A-15
24	Written Statement of the accused No.16 in reply to F.S.	23/01/2012	2430	A-16
25	Written Statement of the accused No.17 in reply to F.S.	23/01/2012	2431	A-17
26	Written Statement of the accused No.18 in reply to F.S.	23/01/2012	2432	A-18
27	Certificate for being Member of Shanti Samiti in the year 2001 issued by Sardarnagar Police Station.	04/01/2012	2434	A-18
28	FIR bearing I-C.R.No. 98/02 of Naroda Police Station	28/02/2002	2435	A-18
29	Order of investigation upon I-C.R.No.98/02 of Naroda Police Station.	28/02/2002	2436	A-18
30	Deposition of Mr. Mysorewala in S.C.No.203/2009.	06/12/2010	2437	A-18
31	Written Statement of the accused No.19 in reply to F.S.	23/01/2012	2438	A-19
32	FIR bearing I-C.R.No.98/02 of Naroda Police Station.	28/02/2002	2440	A-19
33	Order of investigation upon I-C.R.No.98/02 of Naroda Police Station.	28/02/2002	2441	A-19
34	Deposition of Mr.Mysorewala in S.C.No. 203/2009	06/12/2010	2442	A-19
35	Written Statement of the accused No.20 in reply to F.S.	23/01/2012	2443	A-20
36	Identity Card of Gujarat Minorities Finance Department Corporation Ltd.	- - -	2445	A-20

Sr. No.	Description of documents or pursis produced by the accused.	Date	Exh	Produced by which Accused
37	Resolution of Meeting of Gujarat Minorities Finance Department Corporation Ltd.	03/07/2002	2446	A-20
38	Xerox of envelop cover of the accused	- - -	2447	A-20
39	Xerox of ration card	- - -	2448	A-20
40	FIR bearing I-C.R.No.98/02 of Naroda Police Station.	28/02/2002	2449	A-20
41	Deposition of Mr.Mysorewala in S.C.No. 203/2009	06/12/2010	2450	A-20
42	Written Statement of the accused No.21 in reply to F.S.	23/01/2012	2451	A-21
43	Written Statement of the accused No.22 in reply to F.S.	23/01/2012	2452	A-22
44	Written Statement of the accused No.23 in reply to F.S.	23/01/2012	2453	A-23
45	Written Statement of the accused No.24 in reply to F.S.	23/01/2012	2454	A-24
46	FIR bearing I-C.R.No.98/02 of Naroda Police Station.	28/02/2002	2456	A-24
47	Deposition of Mr.Mysorewala in S.C.No. 203/2009	06/12/2010	2457	A-24
48	Case papers of treatment of accused	19/02/2002 to 02/03/2002	2458	A-24
49	Certificate regarding treatment	02/03/2002	2459	A-24
50	Written Statement of the accused No.25 in reply to F.S.	23/01/2012	2460	A-25
51	Written Statement of the accused No.26 in reply to F.S.	23/01/2012	2461	A-26
52	Written Statement of the accused No.27 in reply to F.S.	23/01/2012	2462	A-27
53	Written Statement of the accused No.28 in reply to F.S.	23/01/2012	2463	A-28
54	Written Statement of the accused No.29 in reply to F.S.	23/01/2012	2464	A-29
55	Written Statement of the accused No.30 in reply to F.S.	23/01/2012	2465	A-30
56	Written Statement of the accused	23/01/2012	2466	A-31

Sr. No.	Description of documents or pursis produced by the accused.	Date	Exh	Produced by which Accused
	No.31 in reply to F.S.			
57	A copy of daily newspaper dated 07/09/2008	07/09/2008	2468	A-31
58	Written Statement of the accused No.32 in reply to F.S.	23/01/2012	2469	A-32
59	Written Statement of the accused No.33 in reply to F.S.	23/01/2012	2470	A-33
60	Written Statement of the accused No.34 in reply to F.S.	23/01/2012	2471	A-34
61	Written Statement of the accused No.36 in reply to F.S.	23/01/2012	2472	A-36
62	Written Statement of the accused No.37 in reply to F.S.	23/01/2012	2473	A-37
63	Certificate showing that the accused was M.L.A. but not Minister	23/12/2011	2475	A-37
64	Certificate of Shahibaug Police Station for not having permission of weapons.	27/12/2012	2476	A-37
65	Certificate of Sardarnagar Police Station for not having permission of weapons.	27/12/2011	2477	A-37
66	FIR bearing I-C.R.No.98/02 of Naroda Police Station.	28/02/2002	2478	A-37
67	Deposition of Witness No. 139, Dhirajbhai Lakhabhai Rathod in S.C.No.203/09.	19/10/2010	2479	A-37
68	Deposition of Witness No. 140, Kantibhai Bhikhabhai Soni in S.C.No.203/09.	19/10/2010	2480	A-37
69	Receipt of money deposited for having copy of 'Sandesh' daily dated 01/03/2002.	02/12/2011	2481	A-37
70	C.D. showing presence in the Legislative Assembly on the day of incident along with letter dated 17/12/2011.	- - -	2482	A-37
71	Written Statement of the accused No.38 in reply to F.S.	23/01/2012	2483	A-38
72	Written Statement of the accused No.39 in reply to F.S.	23/01/2012	2484	A-39

Sr. No.	Description of documents or pursis produced by the accused.	Date	Exh	Produced by which Accused
73	Written Statement of the accused No.40 in reply to F.S.	23/01/2012	2485	A-40
74	Written Statement of the accused No.41 in reply to F.S.	23/01/2012	2486	A-41
75	True copy of property card of the accused No.41 as residence proof.	06/06/2002	2488	A-41
76	Identity card of election.	20/01/1995	2489	A-41
77	Card issued by Naroda Police Station for being member of Shanti Samiti.	- - -	2490	A-41
78	True copy of Identity card of A.P.M.C. being Director.	- - -	2491	A-41
79	True copy of rationing card.	19/05/1993	2492	A-41
80	Letter of L.I.C. (inland letter)	- - -	2493	A-41
81	Tax bill of A.M.C.	21/08/2002	2494	A-41
82	Light bill of A.E.C.	07/10/1996	2495	A-41
83	Letter regarding invitation for taking lunch and dinner by A.P.M.C.	12/10/2002	2496	A-41
84	Copy of licence of A.P.M.C. for accused No.41	- - -	2497	A-41
85	Copy of form regarding property tax by A.M.C.	- - -	2498	A-41
86	Written Statement of the accused No.42 in reply to F.S.	23/01/2012	2499	A-42
87	Written Statement of the accused No.43 in reply to F.S.	23/01/2012	2500	A-43
88	FIR bearing I-C.R.No.98/02 of Naroda Police Station.	28/02/2002	2502	A-43
89	Deposition of Mr.Mysorewala in S.C.No. 203/2009	06/12/2010	2503	A-43
90	Written Statement of the accused No.44 in reply to F.S.	23/01/2012	2504	A-44
91	Copy of FIR & Charge-sheet in I-C.R. No.110/02 of Naroda Police Station.	07/03/2002	2506	A-44
92	Order of High Court of Gujarat showing the accused No.44 as victim of riot case	14/12/2010	2507	A-44

Sr. No.	Description of documents or pursis produced by the accused.	Date	Exh	Produced by which Accused
93	Copy of order of complaint filed in Consumer Dispute Redressal Forum	15/07/2011	2508	A-44
94	True copy of paper cutting of daily newspaper 'Gujarat Samachar'	30/12/2010	2509	A-44
95	Copy of deposition of Rakeshkumar Umashankar Raval before Commission of Inquiry.	27/08/2003	2510	A-44
96	Copy of letter under RTI given to Naroda Police Station seeking information of Shanti Samiti .	03/01/2012	2511	A-44
97	Invitation Card for marriage on 28/02/2002	- - -	2512	A-44
98	Written Statement of the accused No.45 in reply to F.S.	23/01/2012	2514	A-45
99	Written Statement of the accused No.46 in reply to F.S.	23/01/2012	2515	A-46
100	Written Statement of the accused No.47 in reply to F.S.	23/01/2012	2516	A-47
101	Copy of affidavit of I.O. Mr. V.V.Chaudhary	01/01/2009	2518	A-47
102	Xerox copy of receipt of vehicle requisition.	25/04/2002	2519	A-47
103	Xerox copy of receipt of vehicle requisition.	25/04/2002	2520	A-47
104	Xerox copy of receipt of vehicle requisition.	23/06/2002	2521	A-47
105	True copy of death certificate of Ramesh Raisangbhai Chhara	17/06/2002	2522	A-47
106	Written Statement of the accused No.48 in reply to F.S.	25/01/2012	2523	A-48
107	Written Statement of the accused No.49 in reply to F.S.	25/01/2012	2549	A-49
108	Copy of certificate of State Transport (Employees) Co-Op. Bank Ltd.	04/12/2008	2550	A-49
109	Copy of Gate Pass of Gujarat State Transport Corp. Ltd.	21/02/2002	2551	A-49
110	Written Statement of the accused No.50 in reply to F.S.	23/01/2002	2524	A-50

Sr. No.	Description of documents or pursis produced by the accused.	Date	Exh	Produced by which Accused
111	Written Statement of the accused No.51 in reply to F.S.	23/01/2002	2525	A-51
112	Written Statement of the accused No.52 in reply to F.S.	23/01/2002	2552	A-52
113	Written Statement of the accused No.53 in reply to F.S.	23/01/2002	2526	A-53
114	Written Statement of the accused No.54 in reply to F.S.	23/01/2002	2527	A-54
115	Written Statement of the accused No.55 in reply to F.S.	23/01/2002	2528	A-55
116	Written Statement of the accused No.56 in reply to F.S.	23/01/2002	2529	A-56
117	Written Statement of the accused No.58 in reply to F.S.	23/01/2002	2530	A-58
118	Copy of certificate for the shop issued by Licence Section (Health Deptt.) A.M.C.	12/09/2011	2532	A-58
119	Copy of Certificate under Gumasta Act issued by A.M.C.	- - -	2533	A-58
120	Written Statement of the accused No.59 in reply to F.S.	23/01/2012	2534	A-59
121	Written Statement of the accused No.61 in reply to F.S.	23/01/2012	2535	A-61
122	Written Statement of the accused No.62 in reply to F.S.	23/01/2012	2536	A-62

(18) At the cost of repetition, it is clarified that none of the accused has chosen to examine defence witnesses.

J. Arguments By Special P.P. :

(19) Mr. A.P. Desai, Learned Special Public Prosecutor, has argued as under.

(19-A) Learned Special P.P. Mr. A.P.Desai, in the company of Learned Additional Special P.P. Mr. G.A.Vyas, for the

prosecution, has argued on the following notable points.

(a) The SIT has been constituted under the Order of Hon'ble the Supreme Court, mainly on the aspect that the investigation done by the earlier investigating agency, was improper and was not done upto the mark. Hon'ble the Supreme Court has ordered for the constitution of the SIT, which, then is to further investigate under Section 173 (8) of Code of Criminal Procedure, 1973.

(b) The charge at Exh.65 is mainly against the accused on the ground to have acted and omitted to act, which resulted into committing of the charged offences either by hatching criminal conspiracy or while acting under common intention, as is provided under Section 34 or by becoming member of illegal association as provided under Section 149 of Code of Criminal Procedure.

(c) The Court may keep in mind that the witnesses - victims belong to lower strata of society, they are rustic, illiterate or have no primary education, they are shocked on account of death of their near relatives and/or their injury in the horrifying event and that the women victims - witnesses are mostly housewives and are of labour class, hence exactness of such witnesses, after lapse of 10 years, is just impossible. Their inability is natural, hence the discrepancy if any, is required to be taken lightly and the Court needs to take grain out of chaff; Each small things cannot be conceived or understood by these witnesses; they may not be able to identify the site of the offence so well, their evidence cannot be discarded on flimsy grounds and/or their lacking on proper prescription.

He gave an illustration to explain his proposition that though he is coming to the Court everyday, he does not know the number of steps in the stair-case being used by him to reach to this Court by adding that, merely for such inability, it cannot be concluded that one does not come to the Court.

(d) Three different citations have been read over and explained.

(1) 2010 CRI.L.J.3889 (Supreme Court) in the case of State of U.P. Versus Krishna Master & Others.

(2) (2011) 4 Supreme Court Cases 336 in the case of Ranjit Singh and Others Versus State of Madhya Pradesh.

(3) (2009) 1 Supreme Court Cases (Cri) 763 in a case between Mahmood and another Versus State of Uttar Pradesh.

The citations are to be dealt with in different parts of this Judgement, hence to avoid repetition, the said exercise has not been done over here. Here onwards, only citation numbers could be referred as and when required.

(I) VICTIMS OR RELATIVES OF DECEASED VICTIMS.

(e) PW-1, 2 and 37 have deposed in accordance with their complaints.

PW-37 has involved A-22, 44 and the deceased Guddu and has identified A-22 and A-44.

(f) The main part of the deposition of PW-38, 40, 41, 45, 52,

53, 58, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72 have been read over to the Court.

(g) It is submitted that the evidence of any witness cannot be disregarded if he has not identified one or two accused. Likewise, the evidence of PW-56 cannot be rejected simply because she has not named A-22 in her printed complaint, Exh.449.

Some parts of the Examination-in-chief of referred PWs were read and discussed by Learned Special P.P. It has also been submitted that the defence has not shown any reason to disbelieve the PW and even no enmity with the accused has also been highlighted.

(h) While reading and referring the deposition of PW-72, Learned Special P.P. has emphasized that there is direct evidence against A-22, 26 & 28, Late Bhavani (also known and referred as Jay Bhavani) and deceased Guddu and through this witness, death of 8 family members have been proved and like all other witnesses, this witness has also become victim of tiring cross-examination. Hence, some discrepancies here or there may occur, but that does not create doubt regarding the truthfulness of this witness.

(i) PW-73 is the witness of morning, noon and evening incidents. He has given account of participation of accused No.20 & 41 and other accused who were named by this witness and about their participation in the offence and this witness has seen some of the accused with deadly weapons but nothing has culled out from the cross-examination of this witness,

which too was a tiring cross-examination.

(j) Chief Examination of PW-74-83, 85-94 and 104-111 was read over to explain as to how natural and how truthful the witnesses are.

(k) PW-112 involves certain deceased as well as accused, against whom the trial has been proceeded. The deposition of this PW proves the offences against the named accused under Sections 425, 436, 147 and 148.

The cross-examination of this witness is on the contradiction alone. Most of the contradictions are the contradictions in the statements before Crime Branch or the statement of the investigating agency prior to formation of SIT, which cannot be attached any value looking to the purpose of the formation of SIT.

The injured witnesses have no axe to grind against any of the accused, no enmity is suggested nor any reason to falsely involve the accused. Hence, looking to the examination-in-chief, when defence has not brought out any material to prove the defence, the witness needs to be considered as truthful witness.

(l) PW-113 is an eye-witness of the riot. She having lost four members of her family, has no reason to speak lie. The cross-examination is attacking the credibility of the witness and emphasizing the false involvement of the accused, which has therefore no value and hence, the witness needs to be believed.

(m) PW-114 is also a truthful witness whose children have

died in the incident. She is natural witness; her cross-examination on topography and on the financial transaction with the accused has not brought any material on record.

The defence has not examined defence witness to prove the financial transaction and there is nothing to disbelieve the witness and therefore, considering the same the witness should be believed.

(n) PW-115 and 116 prove prosecution case and they have no reason to falsely involve the named accused. By their depositions, these witnesses have invoked Section 295 of I.P.C.

(o) PW-135 has proved the case through examination-in-chief. The identification panchnama was drawn vide Exh.236 involving A-38 through PW-34, the Executive Magistrate.

During the course of the cross-examination, the procedure or making of the panchnama has not at all been challenged and that, Exh.236 has in fact remained undisturbed and unchallenged during the cross-examination.

PW-237, 245 and 270 all have supported this witness.

In light of Section 291(A) of the Code of Criminal Procedure, 1973, the panchas of the IP Panchnama were not needed to be examined. Hence, this panchnama needs to be believed.

(p) PW-136 involves A-37 alongwith the other accused. A-37 being sitting M.L.A., should have pacified the mob, but as the deposition of the PW goes, she has provoked the mob.

This PW has no enmity against any of the named accused.

Even if there is no injury certificate, the injury when stated by the witness to have been caused during the riot, should be believed by the Court.

The cross-examination on the probability of the identification to have been true and topography, has not brought any result.

(q) PW-137 & 138 are injured witnesses; they do no exaggeration; they have no enmity and that there is no reason whatsoever put forth to disbelieve both the witnesses, hence they should be believed.

The deposition of all the above referred witnesses and more particularly the examination-in-chief was read over by Learned Special P.P. Mr. A.P.Desai.

(r) PW-140 is an eye-witness to the murder of Ayub by deceased Guddu by using Scythe.

PW-141 is an illiterate injured eye-witness whose cross-examination is only on the affidavit filed by him before Hon'ble The Supreme Court.

(s) PW-142 involves many accused, but it specifically proves that A-61 was supplying inflammable substance to the mob, hence she needs to be held liable for aiding and abetting. It is clear that all the victims - witnesses have proved that the

accused were members of unlawful assembly.

PW-143 involves the accused for both the incidents viz. morning and evening and the witness reveals that the accused were possessing deadly weapons. This witness, who is eye-witness of the murder of Ayub, identifies all the four accused.

(t) PW-144 is an eye-witness. The defence is based on the named accused having social and physical relationship with the PW.

There is nothing, for any of the accused, to show that the witness has enmity or has reason to falsely involve the accused.

This defence of physical and social relationship is a vague defence as in the further statement there is simple denial and the defence has not put up its case through any witness or document about the physical or social relationship. It is therefore, clear that the identified accused are members of unlawful assembly.

PW-146 read with PW-110 shows that the A-36 was armed with pipe. Had the accused been simple spectator, he would not have armed with pipe. Hence, the case against him is proved.

(u) PW-147 supports PW-255. This proves injury to Khalid and death of Abid and that this witness also supports PW-47. The daughter of this witness has also sustained injury.

(v) PW-148 involves Late Guddu and proves that his daughter Nasrin was hurt on her hand. The tiring cross-

examination on topography paves no way for defence to come out.

PW-149 proves the incidents of morning and evening where the accused were with deadly weapons. The witnesses are also eye-witness of the incident of Ayub. Even for this witness, false involvement is out of question.

PW-150 also proves incidents of morning and evening and this witness has no reason to leave aside the real assailants and to falsely involve the present accused.

Considering all the submissions, the mentioned witnesses need to be believed, who prove prosecution case.

(w) PW-151-155 have seen death of their close relatives and have still not involved any accused, hence their deposition should be believed in toto.

(x) PW-156 proves instigation and provocation by A-37; her aiding and abetting in the principal offences; this witness also refers incident of Ayub; oral Dying Declaration of daughter Supriya before this witness, proves rape on the daughter by Late Bhavani, Late Guddu, A-28 and A-40. This witness has also proved role of each witness in the offences. The witness is truthful and nothing is borne out from the tiring cross-examination of this witness.

(y) PW-157 involves A-44, A-22, A-62 and Late Guddu. This witness proves the incidents, which took place in two parts wherein presence of all the accused, armed with deadly weapon can be seen.

Even in the printed complaint at Exh.1111, name of Late Guddu and A-44 was given.

(z) PW-158 involves A-30, who is injured eye-witness of 'U' shaped water tank incident. He lost many of his near relatives and is worthy to be believed.

(aa) PW-159, 160 and 161 involves none, but are themselves injured.

(ab) PW-162 is an eye-witness who gives account of death of Sharif and Siddique and proves that the named accused were members of unlawful assembly and were armed with deadly weapons.

(ac) PW-166 does not know anyone of the mob which killed her husband.

(ad) PW-167 is an injured eye-witness and proves the offences under Section 147, 148 and 149 of IPC.

(ae) PW-163, 164, 168, 169, 172, 173, 174, 176, 177, 180, 182 and 183 are all eye-witnesses, who saw members of the unlawful assembly viz. the named accused with deadly weapons. Nothing is borne out from their cross-examination and that all of them are credible witnesses.

(af) PW-170 and 171 are eye-witnesses. PW-170 reveals presence of identified accused in two different incidents playing leading role in the mob and instigating the mob.

PW-171 has seen the named accused with deadly weapons, all of whom were members of unlawful assembly.

(ag) PW-175 shows that the named accused were leaders of the mob including A-25.

PW-176 proves ingredients of Section 436 by testifying that the Cabins were burnt.

(ah) PW-179 is an eye-witness to the amputation of PW-205, Zarina and is also testifying instigation by the leaders of the mob.

PW-181 is an eye-witness who lost her near relative in the incident. Her cross-examination also does not not bear any fruits.

(ai) PW-188 involves Late JB, A-22, 44 and 41 in the charged offences. During the cross-examination though a document was sought to be produced by the prosecution and that though the same was produced, the defence, after having read the said document, has not relied on the said document.

It needs a special note that, the defence has learned the fact that the documents sought were in fact involving the accused and in the said circumstances, necessary adverse inference needs to be drawn against the defence.

(aj) PW-189 is to be connected with PW-156, 290, to give complete picture of the offences committed by the named accused with deadly weapons resulting into loss of property of

the victims and their relatives.

(ak) PW-191 is the witness, whose daughter, Ayesha and son, Kamarraza were injured and his wife, Bilkishbanu, daughter, Kherunisha and son, Hamidraza had died in the incident. Through this witness, role played by the named accused becomes extremely clear while reading the same alongwith injury certificate Inquest Panchnama, case papers etc.

(al) PW-198, who had lost his son, wife, mother, maternal aunt, daughter of sister and neighbour, involves about 10 of the accused. This witness proves time, date and place of the offence along with the modus adopted by the accused.

PW-203, who is also eye-witness to the case, lost his son.

(am) PW-185, 186, 187, 190, 192, 197, 199, 200 to 203 have all identified the respective accused with deadly weapons in their hands who were leading and provoking the mobs. Not only that, these injured eye-witness have not at all been falsified in the detailed and tiring cross-examination and that these witnesses have suffered loss of their property and sustained physical injury and they have proved the specific act and omission of the named accused.

(an) PW-205, 206, 207 and 209 are all injured eye-witnesses and that though they might not be identifying or involving any of the accused, the fact remains that they do prove the incident and more particularly the ghastly manner in which the incidents have taken place.

(ao) PW-212 involves the named accused for murder of her mother as eye-witness of the entire incident.

PW-213 deposed that the named accused were with weapons, saw the killing and burning of a lame boy Ayyub. This PW is shown in the defence as accused of Sessions Case No.214 and 242/03 for the murder of one late Ranjit who was Hindu.

(ap) PW-214 is an injured eye-witness who lost two of his sons.

PW-217 is a panch witness for the panchnama of the site of the offence in I-C.R.No.176/02 and is also an eye-witness to the incident of his elder brother.

(aq) PW-218 involves A-52 as a person who had in his hand blood-stained hockey stick. This witness is an eye-witness to the murder of his mother.

(ar) PW-219 involves A-56 and he has also identified the accused in the identification parade.

(as) PW-224 involves A-22 and Late Guddu with sword to have committed the offences in the incident.

PW-257 is an eye-witness to the injury of Zarina and death of Shahrukh involving A-22, Late Guddu and Bhavani.

(at) PW-225 is the husband of late Kaushar who speaks about the incident wherein, according to the prosecution case,

A-18 has been involved. He however, does not name A-18.

(au) PW-226 proves that Late Bhavani, Guddu and A-22 were members of unlawful assembly viz. the mob which killed and burnt his elder brother, Mohammad Ayyub.

(av) PW-227 proves instigation by A-37 to the members of the mob and it spells roles of other named accused.

PW-228 testifies that the named accused were with weapons and the PW, at the age of 13, has lost his family members like parents, sister etc.

PW-229 involves the named accused as eye-witness to the incidents where several of his family members had lost their lives.

(aw) PW-230 is the eye-witness to the incident of the water tank who has also seen the injury sustained by victim Kaladiya, Peeru, Abid and Kayyum.

PW-231 has lost her husband as he was burnt alive on the date of incident. This witness has shown involvement of the accused.

(ax) PW-233 is an hawker of Kerosene who sells at and near Nurani Masjid. He has proved the destruction by using his kerosene hand-cart.

PW-234 is son of PW-207, who has given Exh.2305, his application at SIT.

(ay) PW-237 and 245 r/w PW-135 show that the witnesses are related to identification of Motorola telephone instrument which is article-9 of Mudammal (Case Property), which is related to I-C.R.238/02 and panchnama Exh.1868 for the recovery of the said muddamal (Case Property).

PW-239 testifies that on the fateful day, he had 1000 litres of kerosene in stock with him which was used by rioters in the riot in question.

(az) PW-232, 235, 236, 238, 240, 248, 243, 244, 246 and 248 are eye-witnesses to the incidents, who have seen the named accused and other members of the mob with weapons at the site of the offence. Some of them are also injured eye-witnesses and that these witnesses have linked the named accused with the crime.

(ba) PW-249 is a person who was a regular driver of the tanker, which he had parked on the day prior to date of incident. This tanker was driven by someone on the date of the incident, which was used to destroy and damage the Nurani Masjid. On the date, after dashing the tanker with Nurani Masjid, the tanker was burnt.

The daughter of this witness was injured in the incident.

PW-250 proves that A-23 and the named deceased, accused were members of unlawful assembly.

(bb) PW-251, 254 and 255 involve none of the accused, but

they prove the incident which took place on the date. PW-250 is an injured eye-witness who is teacher of religious teaching at Nurani.

(bc) PW-257 is an eye-witness to the incident where the mob had broken the wall of Jawannagar. He saw the named accused while breaking the wall. This witness is also an eye-witness to the murder of Shahrukh; He involves and identifies the named accused.

(bd) PW-258 is natural eye-witness who involves and identifies the accused who were sprinkling kerosene and were burning property which invokes Section 436 of IPC.

PW-259 is a reliable eye-witness to the murder of crippled old lady.

PW-260 is an injured, credible, natural eye-witness, who saw the accused doing arson at her own house.

PW-261 is an injured eye-witness to murder of her own son, Moyuddin by the named accused.

PW-324 and 325 prove murder of their respective husbands. They had burial receipts or receipts given by graveyard authority proving the burial of their respective husbands.

PW-326 involves deceased accused for the murder of her husband, Abdulla whose P.M. is at Exh.618.

(II) COMPLAINANT & POLICE EYE-WITNESS PRESENT AT THE SITE.

(a) PW-262 is a complainant of the complaint Exh.1773 who proves presence and involvement of A-18, 19, 20, 24 and 43 while provoking the mob by the accused.

This witness has also shown the place of offence to PW-296 who has drawn panchnama at Exh.1749, Part 1 to 4.

The complaint has been given immediately on the same day, hence needs to be believed as genuine because there were no chances to give any colour to the prosecution case. This witness had no enmity whatsoever against the accused whom he has named, hence false involvement is ruled out.

This witness has named PW-264 to 267, 274, 277 and 294 as the Police personnel, who were present at the site of the offence.

(b) PW-264 to 267 and 276 support the version of the complainant and are identifying and proving the presence of the named accused.

(c) PW-274 is the first IO of the crime in question; has carried out much part of the investigation; recorded the statements of different witnesses and is an eye-witness of many incidents, after having been recalled. He deposed on the job done by late Shri L.K.Katara, for the investigation of the crime.

PW-277 involves A-18 to 20 and A-24 in the crime. He is a Supervisory Officer whose version supports complainant and

other police officer.

(d) PW-294 is one more police eye-witness, who was Deputy Commissioner of Police, Zone-4 at that point of time. He had knowledge about the incident of 27/02/02. On 28/02/02, he had messaged at about 10:25 AM that, the position is too much tense at Naroda Patiya and that he himself came to Patiya and then upon his report, Curfew was imposed at the Naroda Patia area at about 12:30 noon.

During the course of the cross-examination, the log-book, the affidavit of the witness before Hon'ble Justice Nanavati Commission etc. have been focused, but, they are, in no way, rebutting the prosecution case.

(e) Learned Special P.P. took the Court through different contents of the deposition of PW-274, Mr.Mysorewala and his assignee officers, proceedings carried by Late Mr.L.K.Katara, proceeding admitted by the defence which was done by Mr. M.M.Makwana, Mr.P.M.Zala etc.

He has also taken the Court through the deposition of PW-178, Mr.P.N. Barot, who was II-Investigating Officer.

He has highlighted the investigation carried out by Mr. S.S.Chudasama himself and through his numerous assignee officers like PW-278, 281, 282, 293, 301, 291, 279, 284, 295, 300, 283, 275, 298, 302, 292, 280, 299 and Late Mr. A.A. Chauhan.

It has been forcefully submitted that all these

investigating officers have clearly proved the case of the prosecution.

(f) PW-268 is PSO of Naroda Police Station. PW-296 Mr.Surela has drawn the panchnama of the scene of the offence; PW-215 is a videographer, PW-307. Mr.S.S.Chudasama has drawn the discovery panchnama of A-22, Late Guddu and Late Bhavani. The muddamal recovered from them have been identified by the PW-307.

PW-307 has also filed two charge-sheets, which are of Sessions Case No.235/09 and Sessions Case No.236/09.

He has repeatedly submitted that PW-307 has little time and he has done much of the investigation. This PW-307 has also submitted in writing about the proceedings carried out by him and his assignee officers, all of which are very credible.

(g) PW-275 involves A-41 to 44, 25 to 27 and 38. The identification parade has been held which was successful and that there are discovery panchnamas on record of which the muddamal has been identified by the witness.

PW-313, the 6th IO and PW-317 the 5th IO have arrested many of the accused, most of whom were identified by the said witnesses and that certain accused were also handed over to them by the predecessor IO.

(h) Learned Additional Special P.P. Mr.Vyas addressed the Court on the aspect of the Sting Operation. It has been submitted that PW-312, 314, 320, 322 and 323 are the

witnesses forming a group of witnesses for the Sting Operation. If all these witnesses are collectively read, it shows that three accused were sent to All India Radio Station for recording of their sample voices; Thereafter, the same was sent to Jaipur FSL wherein it was scientifically examined and the outcome was sent in the form of an opinion of the FSL by three scientists. It has been opined that the 15 DVDs recorded by PW-322 Ashish Khetan and 5 CDs of 'Operation Kalank' were all genuine and that no tampering whatsoever was done in the same.

Exh.2213 to 2216, 2201 to 2203, 2258, 2266, 2270, 2273, 2275 and 2276 are all relevant documents. The IO has sent sample voice recording of the accused and the scripts were made from the CD and DVD. The instruments used in the Sting Operation were also deposited with the Police. The instruments have also been identified by the witnesses. This witness involves A-18, 21, 22, 37 & 44 etc. and in view of Section 24 and Section 30 of the Indian Evidence Act, the named accused as well as other accused should be considered as the accused involved in the crime.

(i) PW-273 is an administrative officer of State Transport, who testifies that A-49, 57 and 59 were on duty on the date of incident. The witness further states that different oils were kept in the S.T. Workshop, which is situated opposite Muslim Chawls. The waste oil was not accountable. Taking all these things together, it seems that the burning rags were thrown by the accused viz. A-49, 57 and 59, who were working in the S.T. Workshop on the date of the incident.

Exh.1814 to 1818 also supports the witness.

(j) PW-34, 35 and 36 are Executive Magistrates.

Before PW-34, successful identification parade was held wherein A-38 was identified. In the same way, before PW-35, A-33 was identified and before PW-36, A-53, 54 and 56 were identified.

All the three witnesses have involved the identified accused and that there is sufficient evidence on record to involve all the identified accused from the testimony of victim witnesses.

(k) Learned Special P.P. has taken this Court through the deposition of different doctor witnesses, the linking evidence of different postmortem notes and injury certificate to establish that different accused can clearly be seen to have been connected in the murder, attempt to murder and causing serious injuries to different victims and their relatives.

(l) Deposition of PW-322 shows that the accused have rendered extra judicial confession before this witness, which was apparently voluntary and without any element by which it can be said to be without free consent.

PW-322 is not holding any post in any of the political parties, hence the defence of A-18 that the contentions in the interview were spoken by him on account of the inducement having been made by the witness, is not credible one.

The accused have not made any retraction and that they

have disputed with the contention only during the cross-examination, which is too belated to be true as the retraction should be at the earliest point of time which has since not been done, the extra-judicial confession should be believed as very reliable piece of evidence.

(m) The criminal conspiracy requires meeting of minds of the participants. If the evidence is closely scrutinized, all the members of the crowd had deadly weapons in their hands and this shows common intention and common object in all their minds.

(n) During the earlier submissions, Learned Special P.P. has submitted on citations Nos.1 to 3.

He has now dealt with citations Nos.4 to 37 mainly to submit on the aspect of defective investigation, interested witness, identification parade, appreciation of evidence, principle of corpus delicti, extra-judicial confession, corroboration, impact of long and tiring cross-examination, delay in recording statements, common objects and common intentions etc.

All the thirty seven citations are enlisted at the end of this note of the argument, which shall be dealt with at the appropriate part of the Judgement. Hence to avoid repetition, the opinion on the citations have been avoided here.

(o) It has been submitted that the witnesses have no reason to falsely implicate innocent persons and leave aside the real assailants. When there are many Hindus in the locality then

why only a few have been involved? It shows that there is no substance in the cross-examination.

The principle of finding corpus delicti cannot be invoked in the cases where the burial receipts have been produced as a proof of death.

(p) While submitting as above and relying upon the below listed citations, Learned Special P.P. Mr.Desai has urged to hold all the accused to have committed the charged crimes.

(q) Attention of the Court has been drawn from Exh.2193 to 2198, all of which are Phone Call details of the accused who were continuously in contact with each other and were present on the date at Patiya.

It has been submitted that to establish charge of criminal conspiracy, the presence of the accused at the site is not required, but inference from the facts and circumstances can be drawn about the involvement of the accused. It has been submitted that A-18, 44, 24, 37, etc. were continuously contacting each other which is a pointer to the criminal conspiracy hatched between them.

(r) While recording the further statement, the accused have given false explanation which itself is an adverse circumstance against them.

(s) At least three of the deceased victims have been found missing and invoking Section 108 of the Indian Evidence Act. They should be treated as deemed dead. Moreover, vide

testimony of PW-191, 52 and 174, the prosecution case qua the missing victims stands proved.

It is strenuously submitted by Learned Special P.P. that this is a case wherein prosecution has proved the charge against all the accused beyond all reasonable doubts and that all of them needs to be held as perpetrator of the charged offences, as none else but the accused alone are the authors of the charged offences.

(20) Learned Special P.P. Mr.A.P.Desai has relied upon the following citations to submit as mentioned against each of the citations. The same shall be discussed at an appropriate part in the Judgement. Hence to avoid repetition, the same have been avoided here.

(1) 2010 Cr.L.J. 3889 – State of U.P. V/s. Krishna Master & Others.

(2) (2011) 2 SCC (Cri.) 227 = (2011) 4 SCC 336 - Ranjit Singh & Ors. V/s. State of Madhya Pradesh.

(3) 2009 (1) SSC (Cri.) 763 - Mehmood V/s. State of U.P.

(4) 2009(2) SSC (Cri.) 1055 - National Human Rights Commission V/s. State of Gujarat.

(5) 2008(2) GLR 1598 - Iqbal Moosa Patel, S/o. Mohammad Patel V/s. State of Gujarat.

(6) (2010) 1 SCC (Cri.) 164 = (2009) 11 SCC 737 - R. Venkatkrishnan V/s. Central Bureau of Investigation.

(7) 1996 (0) GLHEL-SC 17538 = 1996 SCC (Cri.) 1353 - Mehbub Samsuddin Malek V/s. State of Gujarat.

(8) 1993 Cri.L.J. 408 S.C. - Nallamsetty Yanadaiah & Ors. V/s. State of Andhra Pradesh.

(9) (2010) 1 SCC (Cri.) 302 = (2009) 10 SCC 477 - Wishnu & Ors. V/s. State of Rajasthan.

(10) (2010) 1 SCC (Cri.) 413 = (2009) 10 SCC 773 – Pandurang Chandrakant Mhatre & Others V/s. State of Maharashtra.

(11) 2007(2) SSC (Cri.) 382 equivalent to 2006(0) GLHEL-SC 38382 - S.C. - Rotash V/s. State of Rajasthan.

(12) 2010 (2) SCC (Cri.) 1258 equivalent to 2010 (5) SCC 91 - Abu Thakir & Others. V/s. State of Tamil Nadu.

(13) 2009(0) GLHEL-SC 43438 - Anna Reddy Sambasiva Reddy V/s. State of Andhra Pradesh.

(14) 2011(1) GLR 860 – Rameshbhai Mohanbhai Koli & Others V/s. State of Gujarat.

(15) AIR 2011 SC 184 - Maqbool @ Jabbir @ Shahnawaz & Ors. V/s. State of Andhra Pradesh.

(16) (2010) 1 SCC (Cri.) 12 = 2009 (9) SCC 417 - Murli & Anr. V/s. State of Rajasthan.

(17) 2008 Cri.L.J. 3903 (S.C.) - Munigadappa Meenaiah V/s. State of Andhra Pradesh.

(18) 2010 Cri.L.J. 3443 (S.C.) - Balraje @ Trimbac V/s. State of Maharashtra.

(19) (2010) 3 SCC (Cri.) 535 = (200)7 15 SCC 393 - Umesh V/s. State of Maharashtra.

(20) 2000 SCC (Cri.) 222 - Leelaram (dead) through Dulichand V/s. State of Haryana & Ors.

(21) 2011(1) Crimes 67 (S.C.) - Sher Singh & Anr. V/s. State of Haryana.

(22) (2010) 1 SCC (Cri.). 1409 = (2009) 14 SCC 436

- Velayuda Pulavar V/s. State by Sub-Inspector of Police.

(23) 2010 (0) GLHEL-SC 49018 - Sansar Chand V/s. State of Rajasthan.

(24) 2003(0) GLHEL-SC 9855 - Government of National Capital Territory, Delhi V/s. Jaspal Singh.

(25) 2002 (0) GLHEL-SC 17855 - Mohd. Khalid V/s. State of West Bengal.

(26) 1981 Cr.L.J. 298 (SC) – Rama Nand & Ors. V/s. State of Himachal Pradesh.

(27) 1992 Cr.L.J. 3144 – Bhagwan Singh & Ors. V/s. State of Punjab.

(28) 1992 Cri.L.J. 3598 = 1991 (0) GLHEL-HC 211952 - State of Gujarat V/s. Hargovindas Devrajbhai Patel.

(29) 1993 Cr.L.J. 1430 – Maideen Sab V/s. State of Karnataka

(30) (2012) 1 SCC 10 – Prithipal Singh & Ors. V/s. State of Punjab & Another.

(31) (2011) 3 SCC 654 – Sheo Shankar Singh V/s. State of Jharkhand & Another

(32) 2008(2) GLH 536 (S.C.) - Mahabir V/s. State of Delhi.

(33) 1996 (0) GLHEL-SC 23202 - Ram Nath Mahto V/s. State of Bihar.

(34) 2003 SCC (Cri.) 641 – Amar Singh V/s. Balwinder Singh & Others.

(35) (2009) 1 SCC (Cri.) 299 - Paramjit Singh @ Mithu Singh V/s. State of Punjab.

(36) 2011 Cr.L.J. (SC) 327 – Ashok Tshering Bhutia V/s. State of Sikkim.

(37) (1995) 5 SCC 518 - Karnel Singh V/s. State of M.P.

(21) Learned advocate Mr.Y.B.Shaikh and his colleagues have tendered through Learned Special P.P. the written arguments for and on behalf of the victims, which was taken on record as Exh. 2599 Part 1, 2, 3.

K. Defense Case In General :

(22) The defence has mainly been advanced on the ground that in most of the cases, the Test Identification Parade has not been held and that in absence of T.I. Parade, it is not safe to believe the identification in the Court, which cannot be relied upon and that since such identity by the PW in the Court has no value, the benefit of doubt should be granted to the accused.

(22.A) Another general defence is of absolute denial of the prosecution case.

(22-B) The defence has also relied upon impeachment of the credit of the witnesses, challenge to veracity in the version of the PW and improbability in the testimony of the PW, the variance in different statements of the witness create doubt in favour of the accused. It has been submitted that all these grounds in the facts of the case grant benefit of doubt to the accused.

(22.C) The credibility of the PW is doubtful as they are giving exaggerated version of the incident which is obviously to falsely rope the accused.

(22-D) Contradictions and omissions from the statements recorded before the Constitution of SIT, have been heavily relied upon to submit that the witnesses are not credible and are not dependable.

(22-E) On account of enmity, the possibility of the false involvement of the accused is very much possible, which needs to be kept in mind.

(22-F) The theory of need of atleast 4 PWs to prove the involvement of any accused has been invoked to submit that many of the accused are entitled to benefit of doubt if the theory is applied which needs to be applied in light of the principle laid down by Hon'ble The Supreme Court.

(22-G) The witnesses are ignorant and unaware about the topography of the area. They, at times, do not know their neighbour, then how such witness can be relied upon when he identifies the accused in the Court for the first time.

(22-H) All the PWs are got up and tutored, hence cannot be relied upon.

(22-I) Postmortem note, inquest panchnama, and the oral evidence do not tally inter se, hence reasonable doubts arise on record.

(22-J) There are numerous common questions asked to the PW which if read is clarifying that the PW are not credible.

(22-K) The applications preferred by the PW in the SIT to record their statements and in case of some of the PW, the affidavits filed before Hon'ble Supreme Court in Transfer Petition and in one case, affidavit filed by the PW before Hon'ble High Court of Gujarat, have all been used to falsify the witnesses and to highlight the omissions and contradictions from the investigation before SIT. They should not be believed.

(22-L) It has been alleged that the investigation, whether that of the SIT or that of prior to the SIT are all defective, faulty, dishonest and malafide, hence such investigation cannot be relied upon to convict any of the accused and that it is settled position of law that such investigation always benefit the accused, which needed to be granted.

(22-M) The variation in the version among the different PWs have also been highlighted to falsify one PW by the testimony of another PW.

(22-N) The principle of adoption of the view which is favourable to the accused in case of availability of two views, has been invoked.

(22-O) The emphasis was on the submission that the prosecution has miserably failed to prove its case beyond reasonable doubt and that there are numerous doubts in the way to believe the prosecution case. The benefit of said doubts were claimed as are available to the accused.

L. Defence Submissions (L.A. Mr. G.S. Solanki) :

(23) Learned advocate Mr.G.S.Solanki, for the accused

No.1, 8, 15, 28, 30, 46, 48, 53, 54, 55, 59 and 62, has submitted as under.

(a) The incident, even according to charge, took place on 28/02/2002 but, some of the PWs like PW-73 mentioned the incident of 27/02/2002, which is not on record. The witnesses have specifically stated that the mobs of Hindus and Muslims were opposing each other. In the complaint, there is no overt act, specific act and omission and even specific place of offence. The investigation was done by three different agencies, and the previous investigation is very doubtful investigation.

(b) PW-1 does not speak from his personal knowledge, he has learned from his wife. He has admitted that Natraj Hotel cannot be seen from his house. Hence other witnesses who are stating that the Natraj Hotel was visible, are giving false deposition.

This PW was a member of advisory committee of Nurani Masjid, hence he is an interested witness. He has not given any police complaint. In the complaint Exh.142, he has not stated the incident, which would mean that the PW is not credible.

(c) PW-2 does business of grocery who was though residing in the S.R.P. Quarters, on the date of incident and even on the next date, did not file any complaint. He speaks about the narrow lanes of Imambibi. Hence it is not probable that he has seen mob of hundred and thousands.

(d) Exh.148 and the deposition are in contradiction to each

other. The testimony is amended version; the mobs were against each other. This PW admittedly did stone-pelting, but has not been made accused.

(e) In the relief camp, police, social worker, organizers of camp, media persons etc. were coming, still the alleged incident has not been informed to anyone by this PW which is not natural. The evidence of this PW is a hearsay evidence; the incident of tanker is not known to this PW. Hence it should be believed that such incident has never taken place. This witness is also not believable one.

(f) The statements recorded after 5 to 6 months, cannot be believed as they can never be genuine, but must be got up.

(g) All PW-6, 7, 8, 10, 11, 12 to 19, 20 to 27 have not supported the prosecution case and the panchnamas through these panch witnesses are not believable one.

(h) PW-72 was at Pandit-Ni-Chali and thereafter at Jawan Nagar where neither mobs have approached nor any ransacking took place. This PW has also not been injured. All the incidents narrated by this witness are based on hearsay as, even though she stays in this area for long, she is unable to specify any topography of the area.

In the application made at SIT, this witness has not named any accused.

This witness has not made any complaint upto six years. It is doubtful whether this witness was ever an eye-witness to

the incident or not and that this witness has given her testimony on tutoring, advice and persuasion of N.G.O., interested in the case.

(i) PW-73 narrates the incident, but the said narration itself proves the improbability of the entire version. This witness has a political career; he knows the law; he gives false account of the incident of the house of Majid and burning of all the family members in the house of Majid. This witness has not identified Tiniyo A-55; this witness has not made any complaint which he would have made, had the incident been true. He falsely implicates the accused. He, therefore, should not be believed.

(j) PW-106 : The deposition of this witness is based on hearsay evidence. She has not named the accused in her Dying Declaration Exh.840. It cannot be believed that her daughters were raped in front of her as she has not given the name of the accused before PW-44 and PW-130, who were independent persons like doctor and Executive Magistrate. This witness is in the habit of changing her version and doing improvisation all the while and hence she should not be believed.

(k) PW-113 - This witness admits that the incident had not happened upto 12 noon. The name of A-28 has been given by this witness only on the basis of doubt and that Dying Declaration of Shahjahan Exh.838 is different than the deposition. The independent witness like Executive Magistrate should be believed in comparison to this witness. This witness is also not believable one.

(l) PW-137 has witnessed the violent mob, but he was not

injured. He has narrated the incident of Tisra Kuva but is not believable one. The entire version of this PW is not probable at all and that he does not speak from his personal knowledge. He learned the things from his daughter. Since he was not injured, the mob was in fact not there.

This witness seems to be in contact with social worker, NGO and even media. Hence it is not possible that he will not complain before anyone of them.

This witness is also making allegations the SIT. He is in the habit of improving his version. In the affidavit before Supreme Court, he has not given the name of the accused. His version seems to have been concocted in the year 2008.

(m) PW-140 speaks on the incident of Ayub, but his version is not tallying with version of PW-143. Hence this witness is not credible.

(n) PW-143 is not a truthful witness. He does not identify A-55 and has concocted the story; has given name of father of A-55 and thereafter tries to improvise his version. This man is in contact with NGO and has cooked up the entire case on the advice of NGO. The incident of Ayub he narrates was not informed to the Police upto 2008.

In paragraph 68, he admits to have dispute with A-55 and his father for his goats. Hence, though he is not an eye-witness, he falsely involves A-55 from whom there is no recovery or discovery.

The version of this witness does not tally with PW-307 and 278. This witness has not named the accused before 2008 which shows the false involvement of the accused.

(o) PW-145 is a tutored witness, who has admitted that “they have hidden themselves on terrace, so as to see to it that they are not visible.”

(p) PW-149 : According to prosecution case, this witness is an eye-witness to the incident of Ayub and Majid viz. family members of Majid. This witness falsifies PW-73. If the version of this witness is seen, it seems that he too advances concocted story and there is no possibility of he being an eye-witness.

This witness has also not informed about the incidence witnessed by him for six months. Even in the camp, he does not file any complaint. This witness has stated in his SIT application that his statements were not according to his say. Hence it is clear that he knows for long that his version has not been recorded as was stated by him and still he has not taken any action. Hence even this PW is not credible.

All the applications tendered to SIT are cyclo-styled and apparently created by NGO. Hence the contentions of the said application are not believable one.

(q) PW-156 : Much hue and cry has been made for the incident of burning of wife and children of this witness. But this witness denies any such incident to have happened. Had this witness been really present at the site, he would not have survived. Hence also the presence of the witness at the site of

the offence does not sound to be probable.

The witness does not complain about the rape of his daughter. It is not possible that the witness who could meet a dignitary like Smt. Soniya Gandhi, would not be able to file his complaint and to tell her about the incident. Exh.836, the Dying Declaration of daughter, Supriya has no mention about any rape having been committed on her or the name of the accused who is alleged to have raped her.

The allegations of this PW are unbelievable. The name of A-54 given by him is based on hearsay. All the nine statements by this witness speak about his habit of improvisation. Hence this witness cannot be believed.

(r) PW-158 : This witness identifies A-30 for the first time in the Court, he has not named him either in his statement before police or D.D. This witness cannot be believed.

(s) PW-172 : A-1 has not been named upto the Police Statement, but thereafter his name has been roped in falsely. Hence this witness cannot be believed.

Like A-1, many of the accused are residing in the same locality and that the victims and accused were knowing each other for long. Hence identification can also be done falsely.

(t) PW-176 is also not credible. The witness involves A-25 falsely because he denied to accommodate the victim and others in his house on that day.

By scheming, all the accused have been involved one by one by concocting stories.

All the applications in SIT are written by the same person by whom Exh.1203 has been written.

(u) PW-182 admits that the witness has not seen any of the accused. Identification Parade has been held but, name of any of the accused has not been given and therefore, this witness is not credible.

(v) PW-184 is a tutored witness by one Nazir Master, his version is absolutely improbable.

(w) PW-189 must have been with his pregnant wife at the hospital on 27/02/2002 because she was admitted. Hence it is not probable that he was at the site on 28/02/2002.

(x) PW-192 is mother of PW-184. On 27/02/2002, though the shops have not been burnt, this witness gives imaginary stories in her deposition though she was at Nadiad. Her conduct is doubtful.

It is not possible that if the history of incident is given, the doctor will not note it down. Hence it is clear that the PW have not given history otherwise the doctor would have noted down the same.

In paragraph 64, this witness states that her husband has gone mad, which is exaggeration. Hence it shows that there is systematic campaign to rope in the accused.

PW-201, 202 and 203 are all tutored witnesses. They are the products of design of NGOs and Nazir Master, who all have continuously improved their versions. It is not possible that they would not complain of any incident to the dignitaries like Smt. Sonia Gandhi and other political leaders, including the Hon'ble Prime Minister.

(y) PW-209 has falsely involved A-53 after the SIT was constituted. His entire version is improbable and based on hearsay. The incident of hall with shutter cannot be believed.

(z) PW-264 and 267 falsely identify the accused. These witnesses are police witnesses who have mentality to involve any person in undetected crimes. If they are telling the truth, why didn't they give their statements on 28/02/2002 itself.

(aa) PW-212 contradicts her sister PW-209. The witness falsely implicates the accused because of enmity on the count that the accused were playing cricket in the pitfall of Jawannagar to which the victims were objecting. The NGOs appears to have tutored the witness.

PW-212 has not given full name of the accused and the full name has been given after lapse of time. Hence it creates doubt. In the circumstances, Identification Parade was very much necessary to eliminate reasonable doubts, but it has not been done.

(ab) PW-52 has not given name of A-62 and has not identified A-62. Upto 2008, name of A-62 nowhere comes but has been wrongly introduced as A-37 by the interested witness.

However, A-62 was never P.A. to anyone. The entire version is imaginary and exaggerated.

The witness in fact resides at Bhivandi and was never resident of Naroda Patiya and is a got up witness. She has never telephoned police or fire brigade on that day. Still she lies in the deposition, as otherwise there would have been vardhi on record.

She has given interview in the combat magazine, but there also she has not given the name of any accused.

(ac) PW-269 is the H.O.D. of Fire Brigade. According to him, he was receiving 25 fire calls per minute. Hence the fire services were on.

Many points told by different PWs do not tally with the version of this witness.

(ad) PW-157 and 236 are the real brothers. These witnesses are stating that they have made phone calls to police control room and fire brigade from terrace. But then, there is no record of the same and hence the said version is a white lie.

PW-236 has stated that A-37 was with her husband whereas another witness states that she was with her P.A. This contradictory version should benefit the accused.

(ae) PW-327 is the Investigating Officer of SIT. SIT has not done any investigation and has only recorded further statements. There are many lapses in the investigation of the incidents like Water Tank, incident of Ayub, incident of Siddiq,

Sharif, Majid etc.

(af) As a matter of fact, it is an admitted position that entire rioting was initiated when one Hindu man named Ranjit was killed and his dead body was thrown on the road with perverted appearance and when a Muslim driver drove TATA 407 in rash and negligent manner, which took toll of two Hindu lives. The provocation or the reason of the rioting are these two but unfortunately, NGO has given a political colour to the incidents and have tried to make gain out of it.

(ag) All the PWs were admittedly frightened hence they cannot remember the details of the incident. Hence their implication of the accused at a later stage, should not be believed at all.

Since the prosecution has not proved the charges against the accused, they need to be acquitted. It was urged to acquit the accused.

(24) Learned advocate Mr.R.N.Kikani on transfer pursis has submitted for and on behalf of the accused No.2, 18 to 20, 24, 38, 41, 43, 44, 58 and for 34 to 36.

(a) Section 120B and Section 34 of IPC require previous meeting of mind, which has not been proved by the prosecution.

(b) The Prosecution Case is based on the call for the Bandh given by Vishwa Hindu Parishad. But it has not been proved by the prosecution beyond reasonable doubt.

(c) There is no evidence that the weapons were circulated. There is no evidence that the named police witnesses were injured since all of them have not been examined without any reason.

(d) If the inquests on the record are seen, there is no evidence of any incident of rape. No medical officer has supported the case of rape and there is no evidence on record whereby it can be said to have been proved that 58 victims have been done away at one place.

(e) The PWs have got guts to file affidavit in Supreme Court, hence they cannot be called rustic.

(f) Because of enmity between the two communities, chances of false involvement are high.

(g) All the statements and investigation before SIT have been confirmed by PW-327, the IO of the SIT. None of the PW has confronted the same. There is no order of the Hon'ble Supreme Court to brush aside the investigation prior to SIT. Hence all the same needs to be believed in its entirety.

(h) The evidence of 'Sting Operation' of A-18, A-21, A-22 has hardly any corroborative value. Section 65(2) of the Indian Evidence Act provides that the certificate of genuineness has to be accompanied with the material of 'Sting Operation'. In this case, since it is absent the material of the 'Sting Operation' cannot be read into evidence.

Even there is no base laid by the prosecution to

prove the 'Sting Operation' to be genuine.

(i) If the deposition of different PWs are read, it is clear that there is notable discrepancies in all of them and that it creates doubt against the prosecution case.

(j) PW-200 Shri Shaukat Nabi was a rash and negligent driver of TATA 407 because of whom one Hindu was killed and that after having chased him, he was brought to the police station, but still, this witness did not file any police complaint about what he has seen.

(k) If two different PWs are not tallying with each other then both of them should not be believed.

(l) Prosecution is suppressing the site of the offence and the position on the day of the offence by not examining the then Circle Inspector whose testimony was essential to unfold prosecution case.

(m) There is no evidence that in 2002, there was Madressa in the Hussainnagar. If the map would have been allowed to come on record, the Madressa could have been seen or not seen which should have led to the truth.

(n) Exh.662 is the first inquest, which is drawn in the early hours of 1st March, 2002. If this inquest is seen, neither the names of the assailants are there nor the Crime Register number of the case, in which the inquest was drawn. This position shows that in fact, no complaint was lodged till the inquest was drawn and this creates doubt against the

complaint and the inquest. It is forcefully submitted that the complaint is ante-dated and ante-timed, hence cannot be believed.

(o) The F.I.R. of I-C.R.No.100/02 has been received by the concerned Court of learned Metropolitan Magistrate on 02/03/2002. Even this is supporting the submission that upto 06:30 AM on 01/03/2002, the F.I.R. was not at all lodged.

(p) PW-208 states in his testimony that for the entire day and night he was at his house on his terrace at Jawannagar, but still as admitted by this witness, he neither saw the police nor the procedure of inquest panchnama being carried out.

He further admits that the wife of Aabid sat upto 06:30 AM on 01/03/2002 at his house with the dead-body of Aabid. If Exh.662 is seen, the police found the dead-body (body No.56 of Exh.662) from the roof. The prosecution does not examine the wife of Aabid. Putting all these things together, it is clear that the investigation is tainted and designed to falsely involve the accused whose names have been shown in the complaint.

(q) The complaint of the witness Mr.V.K.Solanki, the F.I.R. and Exh.662 the inquest panchnama are all got up which are full of infirmities, which goes to the root of the prosecution case.

(r) The dead body of Ranjit was found in distorted condition. The complaint for the murder of Ranjit and the

complaint against the Shaukat Nabi, are in fact cross cases of this case and the prosecution should put both the cases before the Court to avoid gross injustice.

(s) Material discrepancies and paradoxes on record, contrary version of PWs with each other, exaggerated version of the PWs, non-corroborating parts of the testimony with medical evidence, discrepancy about the time of occurrence, about number of persons in the mob, about the name of the weapons the accused were holding, about colour of their dress or uniform on the day, about the words of their slogans, about the time of the incident etc. have all remained unexplained.

In the testimonies of PWs, truth and falsehood are so much mixed up that it is not possible to separate the same and hence, the evidence of all such PWs should be discarded.

(t) PW-103, Dr.Kanoriya opines that there was no injury by sharp cutting instruments on the stomach of Kausharbi and no injury was caused to the foetus in her body. Hence it is clear that her postmortem Exh.657, inquest panchnama Exh. 662 (qua body No.7), do not tally to one another. The prosecution story of the Kausharbi of having been stabbed by sword by A-18, therefore, needs to be held totally false, which also affects the genuineness of the 'Sting Operation' and which proves that the 'Sting Operation' was not genuine. It was simplicitor reading of the script given to the PW.

(u) It is very unnatural that the PWs do not raise their voice until their recording of the statement and have observed silence.

The incident is undisputed, but the genesis of the crime, the manner in which the crime is being shown to have been committed by the PW is disputed version.

(v) The mob has attacked at the crowded places like different Muslim chawls, hence the witnesses have very limited time to identify the accused and therefore, without corroboration the witnesses cannot be believed.

The consistency amongst the testimonies of all the PWs is a key-feature which lacks in the case and not even two of the PWs speak consistently. Hence their version is absolutely doubtful.

(w) It is too astonishing when PW-236 Siddique Allabax Mansuri has identified certain accused abruptly for the first time in the Court for whom no Identification Parade was carried out. To the utter surprise of every one, this witness identified A-17, 20, 24, 57 as leaders of the mob on that day without naming them.

This itself shows the poor quality of the witnesses and strength of the tutoring. Such witnesses cannot be believed by the Court.

(x) The investigating agency has not held Test Identification Parade and thereafter the witnesses have straightaway identified the accused in the Court, which is a weak piece of evidence.

The witnesses have no occasion to identify the accused properly on the date of the occurrence. Hence the identification before the Court has no value.

(y) As has been admitted by PW-327, he did not take A-24 before Dr.Nilkamal for identification but he does not offer any plausible explanation for the said lapse.

(z) Inconsistent versions of occurrence, new stories made by PW before different investigating agencies and after six and half years before the SIT and 10 years thereafter before the Court, is suggestive of the fact that such PWs cannot be believed.

(aa) All PWs were freely moving in the Relief Camp, services of NGO and Advocates were admittedly made available to them. Media was present through out and they used to go outside the camp and still they did not file any complaint and did not give their versions before the Investigating Officer for more than two or three months, as the case may be. This also creates doubt in favour of the accused.

(ab) Inordinate delay in lodging the complaint and the recording of the F.I.R. was done admittedly after counting the dead bodies at the site. Discrepancies between inquest and the oral version, non-collection of controlled earth with ashes, earth with blood from the place where numerous people were done away and were burnt alive, which is clearly creating benefit of doubt to the accused.

(ac) To prove the case of the prosecution that burning

rags were thrown and gas cylinders were blasted, the investigating agency should have at least collected a single piece of burnt rag and remains of the gas cylinder, but the same has not been done.

No evidence has been collected to prove the use of inflammable substance on the day.

(ad) No doctor has noted the smell of the kerosene, petrol or any inflammable substance on the body or cloth of the victims of this offence. Hence prosecution story seems to be a coloured version and a story written by numerous authors which is edited by numerous editors. Hence, none of the parts can be believed.

(ae) It is quite unnatural that the victims in the camp do not share their agonies with each other. It is also surprising that though they went in the police vehicle, they did not share their sufferings with police, which had even happened while drawing the panchnamas of their houses and they also did not say their sufferings to the organizers of the camp. Hence the testimony of the PW is not reliable, is not corroborated and is not trustworthy.

The so-called discovery does not provide a clue to establish the guilt of A-22, 41, 44 and of Bhavani.

(af) The Dying Declaration of 11 victims were recorded, which is more reliable than the statement before Police. But in these Dying Declarations there is all variance about the site of the offence.

(ag) Every doctor has a duty to record the history of the occurrence as stated by the victim. But none of the injured has implicated any of the accused before the doctor.

None of the weapons were sent to F.S.L.

The statements of the doctors have not been recorded. The Investigating Officer ought to have shown the weapons to the doctor and should have obtained the statement of the doctor and only then the opinion of the doctor can be taken into consideration. The doctor ought to have verified and compared the edges, width of the wound with the weapon and only then his opinion would be valid.

(ah) All the PWs are interested witnesses as they have engaged their private advocates, took the help of NGO and that their version is aimed to falsely implicate the accused, hence they cannot be believed.

Moreover, certain witnesses have been dropped by the leaned Public Prosecutor without any substantial and acceptable reason, which itself is sufficient to draw adverse inference.

(ai) None of the witnesses have spelt the name of the writer of the application tendered by them to SIT. This reveals the conspiracy hatched by NGO or else it is unnatural that one does not know the name of the writer of the application.

(aj) Even if the accused are believed to have been

together on the date of the occurrence, merely that does not prove the existence of criminal conspiracy amongst them.

(ak) The map drawn in the beginning is the best evidence. But why that has not been brought on record, has remained unexplained. Hence adverse inference be drawn.

(al) In these communal riots, even Hindus are sufferers, their statements were also recorded by the investigating agency, but the prosecution is trying to show only one side of the coin by only examining the Muslim witnesses.

The casualty of the Hindus viz. death of Ranjit, Varmaji and Gulab Vanzara has not been explained by the prosecution.

The Hindu residents of Gangotri Society and Gopinath Society were present in their houses; there were Hindu residents residing at Jawannagar; the properties of many Hindus were damaged, including the property of A-44; still none of the Hindu witness has been examined as victim, which is unfair on the part of the prosecution.

(am) The speech or the expression in the 'Sting Operation' is hallucination. In the same way, the evidence of some of the PWs is totally imaginary and clearly seems to be hallucination. No Investigating Officer has investigated about the incidents in the talk recorded of the accused. There is no corroboration to the incidents talked in the Sting. The talk in the Sting is on account of inducement by Mr.Khetan and it is because of the false identity given to the accused.

(an) Most of the PWs live in an imaginary world and they have tried to create a story on the basis of the talk in the 'Sting Operation'.

(ao) On 28/02/2002, the atmosphere was very stressful; stone-pelting and firing was all around on the Narol-Naroda Highway; properties and place of businesses of both the communities were damaged. Being afraid of mob mentality, some of the accused might have kept weapon like A-36 and iron pipe, which may be to protect their business places, family members etc. Hence they cannot be treated as members of unlawful assembly or as were sharing common object or intention.

Irrespective of religion or community, one was required to keep a weapon on the day for the protection.

There is a positive evidence to show that A-36 has saved many Muslims, hence the fact of his keeping iron pipe, is of no significance.

(ap) **A-36** : PW-110 and 146 have been examined, both have whom have given positive evidence in favour of A-36 for saving lives of Muslims. Hence, the charged offences cannot be said to have been committed by him.

(aq) **A-34** : Only PW-167 implicates this man. But in light of the cited Judgements, at least four witnesses should state about the presence and participation of the accused. Here since there is only one witness qua A-34, in any case, A-34

should be given benefit of doubt.

Out of the four statements, in the first two statements, the witness does not give the name of A-34. No Test Identification Parade has been held. He has been identified for the first time in the Court.

This witness has not stated about any overt act of the A-34 and that there is lack of consistency in his testimony, with reference to the cloth worn by the members of the mob and colours of the scarf they had. Hence this witness, qua A-34, should not be believed and A-34 needs to be given benefit of doubt.

(25) Learned advocate Mr.R.N.Kikani, for the defence, for himself as well as for on behalf of all the accused, except the accused represented by learned advocate Mr. K.N. Thakur, has relied upon the following citations, which shall be discussed at an appropriate part in the judgement. Hence to avoid repetition, the same has not been discussed over here. The same are as under, as submitted by the L.A. Mr.R.N.Kikani for the defence.

M. Defence Citations (L.A. Mr. R.N. Kikani) :

(1) 2012 Cr.L.R. 1 Supreme Court - In the case of Kailash Gour and Others Versus State of Assam

(2) 1997 Cr.L.R. (Gujarat) 181 In the case of Bachubhai Mohanbhai Versus State of Guarat.

(3) 1998 (1) GLH 924 Gujarat High Court - In the case of Kanubhai Patel Versus State of Gujarat

(4) 1965 (1) Cr.L.J. 226 (Vol.70, C.N.73) Supreme

Court = AIR SC 1965 202 - In the case of Masalti & Others Versus State of U.P.

(5) 1997 Cr.L.R. (SC) 467 Supreme Court = AIR 1997 SC 1654 - In the case of State of U.P. Versus Dan Singh & Others.

(6) (1977) 1 SCC 733 Supreme Court = AIR 1976 SC 2566 - In the case of Musa Khan & Others Versus State of Maharashtra.

(7) 2011 Cr.L.R. (Guj) 112 Gujarat High Court - In the case of Ismail Ibrahim Gor Sheth Versus State of Gujarat.

(8) 2011 Cr.L.J. 283 Supreme Court = AIR 2011 SC 255 - In the case of Ranjitsinh & Others Versus State of M.P.

(9) 1990 AIR (SC) 1709 Supreme Court - In the case of State of U.P. Versus Motiram and another etc.

(10) 1981 Cr.L.J. 725 Supreme Court = AIR 1981 SC 1218 - In the case of Bhudeo Mandal & Others Versus State of Bihar.

(11) 2010 SAR (Cri.) 508 Supreme Court = Supreme 4 (2010) 180 Supreme Court = AIR 2010 SC 2768 - In the case of C. Magesh & Others Versus State of Karnataka.

(12) I (2005) CCR 69 (SC) = AIR 2005 SC 722 - In the case of Nagarjit Ahir etc. Versus State of Bihar.

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(15) 1999 Cri.L.R. (SC) 665 Supreme Court = AIR 1999 SC 3830 - In the case of Ramashish Yadav & Others Versus State of Bihar

(16) 2010 (2) CACC 41 (SC) Supreme Court - In the case of Adalat Pandit & Others Versus State of Bihar.

(17) 2011 Cr.L.R. (SC) 520 Supreme Court = AIR 2011 SC 1825 - In the case of Shaji and others Versus State of Kerala.

(18) 2011 (1) CACC 457 (Jhar.) Jharkhand High Court - In the case of Balram Lohar and Others Versus State of Jharkhand.

(19) IV 2010 CCR 509 (SC) Supreme Court = AIR 2010 SC (Supp) 204 - In the case of Pandurang Chandrakant Mhatre & Others Versus State of Maharashtra.

(20) 2011 Cr.L.R. Gujarat 843 Gujarat High Court - In the case of Hira Asha Rabari Versus State of Gujarat.

(21) 2003(2) Crimes 520 (SC) Supreme Court = AIR 2003 SCW 2483 - In the case of Babudas Versus State of M.P.

(22) 1976 Cr.L.J. 1409 Delhi High Court - In the case of Bhola Nath Versus State.

(23) 2011 Cr.L.R. (SC) 239 Supreme Court - In the case of State of U.P. Versus Munni Ram and others

(24) 1996 Cr.L.J.3147 Bombay High Court - In the case of Ashraf Hussain Shah Versus State of Maharashtra.

(25) 2011 Cr.L.J. 1677 Calcutta High Court - In the case of Mobaraka Sk. alias Mobarak Hossain and others Versus State of West Bengal.

(26) 2011 Cr.L.J. (SC) 2640 Supreme Court = AIR 2011 SC 1736 - In the case of Kuldeep Yadav and others Versus State of Bihar.

(27) 2007 Cr.L.R. (SC) 851 Supreme Court = AIR 2007 SC (Supp) 1606 - In the case Ramesh

Baburao Devaskar & Others Versus State of Maharashtra.

(28) 2011 SAR (Criminal) 163 Supreme Court = AIR 2011 SC 632 - In the case of Sajjan Sharma Versus State of Bihar

(29) 2010 Cri.L.R. (Suppl.) (SC) 792 Supreme Court = AIR 2009 SC 1866 - In the case of State of Kerala Versus Anila Chandran @ Madhu & Others.

(30) 2010 Cri.L.J. (SC) 3910 Supreme Court = AIR 2010 SC 3000 - In the case of Siddanki Ram Reddy Versus State of Andhra Pradesh.

(31) 2009 SAR(Cri.) 837 Supreme Court = AIR 2009 SC (Supp) 2189 – In the Case of Ramesh Versus State of Karnataka.

(32) 1982 Cri.L.J. 630 (2) Supreme Court = AIR 1982 SC 839 - In the case of Mohanlal Gangaram Gehani Versus State of Maharashtra.

(33) 2010 Cri.L.R. (Gujarat) 351 Gujarat High Court - In the case of Patel Dilipbhai Talshibhai Versus State of Gujarat.

(34) 2004-05 (Suppl.) Cr.L.R. (SC) 123 Supreme Court = AIR 2004 SC 4965 - In the case of D.Gopalkrishnan Versus Sadanand Naik & Others.

(35) 1974 Cri.L.J. 1286 (V 80 C 483) Supreme Court = AIR 1974 SC 1871 - In the case of State of Haryana Versus Gurdial Singh and another.

(36) 2011 SAR (Cri.) 610 Supreme Court = AIR 2011 SC 2302 - In the case of A.Shankar Versus State of Karnataka

(37) 1976 Cri.L.J. 1985 Supreme Court = AIR 1976 SC 2488 - In the case of State of Orissa Versus Mr.Brahmananda Nanda.

(38) 1979 Cri.L.J. 640 Supreme Court = AIR 1979 SC 697 - In the case of Panda Nana Kare Versus

State of Maharashtra.

(39) 2004-05 (Suppl.) Cri.L.R. (SC) 385 Supreme Court = AIR 2004 SC 4592 - In the case of Ramsewak and others Versus State of M.P.

(40) 1978 Cri.L.R. (MAH) 53 Maharashtra High Court - In the case of Nathu Totaram Pardeshi Versus The State of Maharashtra.

(41) 1970 GLR 684 Gujarat High Court - In the case of Mehboobmiya Hasumiya Versus State of Gujarat.

(42) 2011 Cri.L.J. 1844 Gauhati High Court - In the case of Prabhat Marak & Another Versus State of Tripura.

(43) 1991 Cri.L.R. (SC) 897 Supreme Court = AIR 1991 SC 2246 - In the case of Sherey & Others Versus State of U.P.

(44) 1979 Cri.L.J. 51 Supreme Court = AIR 1979 SC 135 - In the case of Ganesh Bhavan Patel & Others Versus State of Maharashtra.

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(46) 2009 (5) G.L.R. 3653 Gujarat High Court - In the case of Shaileshkumar Chandrakant Bhatt & Another Versus State of Gujarat.

(47) SCAcqCrJ – 770 Supreme Court - In the case of Kalyan and others Versus State of U.P.

(48) 1996(1) GLR 292 (Gujarat) - In the case of State of Gujarat Versus Hasmukh @ Bhikha Gova Harijan

(49) 2011 Cri.L.J. 3075 (Guj.) - In the case of Ishwarbhai alias Lakhio Chimanbhai Versus State of Gujarat.

(50) 2002 Cri.L.J. 2970 (SC) = AIR 2002 SC 2374 - In the case of Dinesh and another Versus State of

Haryana

(51) 2009 Cr.L.R. 794 (Guj) - In the case of Dadubhai Dehabhai Kathi and others Versus State of Gujarat.

(52) 2008 SAR (Cri) 1, Supreme Court = AIR 2008 SC 533 - In the case of Kapildeo Mandal and others Versus State of Bihar.

(53) SCAcqCrJ 1154 Supreme Court - In the case of Ramsingh and others Versus State of Haryana

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(55) 2011 Cri.L.J. 1966 (Patna High Court) - In the case of Mrityunjay Mani Mishra and others Versus The State of Bihar.

(56) 2006 SAR (Criminal) 627 Supreme Court = AIR 2006 SC 2908 - In the case of Syed Ibrahim Versus State of Andhra Pradesh.

(57) 2000 (2) GLR 1364 Gujarat High Court - In the case of Rolia Jamal Ratwa Versus State of Gujarat.

(58) 1976 Cri.L.J. 1987 = AIR 1976 SC Page 2566 - In the case of Musa Khan and others Versus State of Maharashtra.

(59) 2003 Cri.L.J. 3876 (1) Supreme Court = AIR 2003 SC 3617 - In the case of Sucha Singh and another Versus State of Punjab.

(60) 2001 Cri.L.J. 102 Supreme Court = AIR 2001 SC 175 - In the case of Saju Versus State of Kerala.

(61) 2001 Cri.L.J. 2404 Delhi High Court - In the case of State and etc. Versus Siddharth Vashisth alias Manu Sharma and others.

(62) 1997 Cri.L.J. 3956 Supreme Court = AIR 1997 SC 3247 - In the case of Sahib Singh Versus State of Haryana.

(63) 2000 Cri.L.J. 489 (1) Supreme Court = AIR 2000 SC 361 - In the case of Padam Singh Versus State of U.P.

(64) 2009 Cri.L.R. (Gujarat) 419 - In the case of Dineshbhai Pujabhai Baria Versus State of Gujarat.

(65) 1990 Cri.L.J. 2597 Supreme Court = AIR 1991 SC 4 - In the case of Budhwa alias Ramchandran and others Versus State of M.P.

(66) AIR 1995 SC 2449 - In the case of Satguru Singh Versus State of Punjab.

(67) 1999 (1) GLR 800 (Gujarat) - In the case of Natubhai Bhudarbhai Versus State of Gujarat.

(68) 1988 (2) Crimes 437, Gauhati High Court (DB) - In the case of Abdul Hamid and others Versus State of Assam.

(69) 2005 Cri.L.J. 2579 (SC) = AIR 2005 SC 2439 - In the case of State of U.P. Versus Gambhir Singh and others.

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(71) 1990 Cri.L.J. 248 (Orissa High Court) - In the case of Chinu Patel and others Versus State of Orissa.

(72) 1998 Cri.L.R. (SC) 472 = AIR 1999 SC 537 - In the case of Din Dayal Versus Raj Kumar @ Raju and others.

(73) 2001(4) GLR 3530 (Gujarat) - In the case of Ramanbhai Nanjibhai Parmar and others Versus State of Gujarat.

(74) 2008 Cri.L.R. 560 (Gujarat) - In the case of State of Gujarat Versus Sabbir Rasul and others.

(75) AIR 1974 SC 344 - In the case of Harchand

Singh and another Versus State of Haryana.

(76) AIR 1975 SC 1727 - In the case of Ram Narain; Jagar Singh and others Versus The State of Punjab.

(77) 1974 Cri.L.J. 510 (V 80 C 178) Supreme Court = AIR 1974 SC 775 - In the case of Babuli Versus The State of Orissa.

ADDITIONAL LIST OF CITATIONS / AUTHORITIES.

(78) 1947 Cr.L.J. 522 - In the matter between Amin Chand and Others Versus The Crown.

(79) Cr.Appeal No.314-DB of 2007 before High Court of Punjab & Haryana at Chandigarh in the matter between Mansa Singh Maddi Versus The State of Punjab.

(80) 1990 Cr.L.J. 255 - In the matter between Ramesh Kumar Versus State (Delhi Admn.)

(81) 2012 Cr.L.J. 510 - In the matter between Mangal Tularam Warkhede Versus State of Maharashtra

(82) Criminal Appeal No.1387/2004 with Criminal Appeal No.1489/2004 before High Court of Gujarat in the matter between Vipulbhai Parshottambhai Parmar & 3 Versus State of Gujarat.

N. Defence Submissions (L.A. Mr. N.M. Kikani):

(26) Learned advocate Mr.N.M.Kikani, for the accused No. 2, 5 to 7, 9, 11, 13, 14, 16 to 20, 22 to 27, 29, 37, 38, 41, 43, 44 and 58 has submitted for himself and on behalf of the learned advocates Mr.M.J.Dagli and Mr.H.S.Ravat as noted herein below.

(a) As far as accused Nos.8, 12, 13, 14, 15, 16, 29 and 35 are concerned, there is neither any ocular evidence nor any documentary evidence and even circumstantial evidence against these accused is not brought on record. Hence it can be said that these accused have been falsely dragged into the litigation and that the prosecution has not proved any case against all these accused. Hence, they should be honourably acquitted.

(b) A-21 and 33 are also such accused, against whom, except the 'Sting Operation' and presence in the hospital, respectively, no evidence is put forth by the prosecution. Both these accused have also been falsely arraigned in the case and that they also needed to be acquitted.

(c) The accused Nos.6, 7, 9, 11, 31, 32, 34, 43, 46, 48, 49, 51 and 59 are such accused, against whom, there is evidence of only one prosecution witness. In light of the settled principle for appreciation of evidence, in cases of communal riots, an accused who is arraigned in the case only by one prosecution witness, should be acquitted.

(d) PW-116 names A-6, 7, 9 and 11, but in his first statement dated 13/04/2002, he reveals the case against these four accused, but then since the said statement is made after two months, this witness cannot be believed.

(e) PW-212 : PW-212 did not testify on any overt act or possession or holding of weapon as far as A-31 is concerned. Hence, as far as A-31 is concerned, this witness cannot be believed when she is involving A-31 falsely in the case.

* Exh.1333 is the Inquest and Exh.585 is the Postmortem Note of the deceased mother, Zarina of this witness.

* In paragraph 7, this PW-212 shows that since Bhavani has denied access to her in his house, he and his daughter have been falsely involved by this witness.

* In paragraph 9, she states that Guddu, A-1, 10 and 22 have given gupti blow, but since no gupti has been recovered and that medical evidence of deceased Zarina does not support the gupti blow since the gupti would have pierced wound, which is not seen at Exh.585, Postmortem Note, hence this witness cannot be believed to have been eye-witness to the attack on her mother.

* Vide Exh.1333, inquest panchnama has been drawn. The site from where the dead body of the mother was seen is such a place, which does not tally with the deposition of the PW-212.

* No remains of the burnt mattress on which Zarina had been alleged to have been burnt, is shown to have been recovered. Hence the story of attack on Zarina does not get any support.

* PW-212 has not disclosed the incident to anyone. Even while accompanying the police to draw the panchnama of her house, she did not inform the police about the incident. It is unnatural that such an incident,

though had been witnessed by her, was not informed by her to anyone.

* Exh.1515 is her application given to SIT. In this application, she complains that the police has not written her statement as was dictated by her.

* The SIT has endorsed the previous investigation as true and has acted upon it. The witness has though not read her statement before the application to SIT, how can she contend that the police did not write as was told by her.

* The witness does not know who authored the complaint for her and is not able to identify that person. Hence, it cannot be believed that she can identify the accused, whom she had seen 8 years before as against the author of her application for SIT who was seen by her only before 2 years.

The sister-in-law i.e., the wife of the brother of PW-212, is one Pinki who, according to defence, is a daughter of A-48. It is unnatural that the witness did not know the father of her sister-in-law (Bhabhi). This shows that witness is lying.

* Paragraph 57 shows that the shutter in which this witness had hidden herself could be opened from outside still nobody had attacked the group of Muslims there. This shows that there was none to attack them.

* If she would have been with her mother why she was

not beaten by the mob. Since it is not probable, it is clear that she was not with her mother on that day.

* In paragraph 65, the witness states that she has not seen any temple, situated opposite go-down. It seems that she has not at all visited the hall because one who visits the hall must see the temple besides it.

* In the postmortem of Nasim, sister of PW-212, it is clear that she was not raped and to that extent also the prosecution case qua Zarina and Nasim does not stand proved.

* All the victim witnesses have almost stated that they had been to Gangotri Society. It is therefore, clear that the Muslims were feeling safe at Gangotri and that it cannot be held that the attack was done by the residents of Gangotri Society.

* The incident of Zarina, according to inquest, had taken place at Jawan Nagar Lane No.III. But the witness as admitted to have not seen that incident. Hence she cannot be accepted to have been eye-witness to that incident.

* The PW gives improved version. There is no Test Identification Parade held; no possibility of the witness having eye-witnessed the two incidents, one of Zarina and another of Nasim. Hence, the entire version of this witness cannot be believed, who does not speak truth but speaks whole lie.

* If paragraph 97 and 98 are seen, the identity of A-31, about whom the witness does not state to have been armed with, becomes doubtful and that no case has been made out against A-31 or any of the accused named by the witness.

* This witness is not an eye-witness to any of the incident. Her version is full of improbability and considering her conduct, she cannot be believed.

(f) A-48 – PW-203 : PW-203 is the only witness who names A-48. The witness has not identified A-48 in the Court. No identification parade was held by the investigating agency. When the mob is large, the opportunity is very less for the witness to notice the accused. Hence without proper identity the witness cannot be believed.

Moreover, in the deposition, the incident of Sharif is stated to had occurred near the resident of Bhavani. In the inquest, Exh.194, it is shown to be near SRP Group-II. The injury shown at the postmortem at Exh.389 does not tally with the deposition. The witness cannot be treated as eye-witness to the incident of Sharif, hence he cannot be relied upon.

(g) A-51 and PW-213 : PW-213 was facing trial for the murder of Ranjit, but still he pleads his ignorance on that aspect, hence he cannot be believed.

* A-51 is shown to have been carrying gas cylinder which is not probable.

* At paragraph 11, he creates valid doubt on the

prosecution case of private firing.

* If Exh.950 the panchnama of the rickshaw is read along with the deposition of PW-140, the rickshaw owner, it is clear that PW-140 states that Ayub jumped from terrace whereas PW-213 states that in the hush-up/rush-up the Ayub fell down. PW-140 and PW-213 are contradicting each other and hence both cannot be believed.

* PW-213 at para-38 contradicts with PW-52, Amina. Her presence on the terrace is therefore doubted.

* PW-213 does not spell about the dead bodies near the Water Tank, which other witnesses are telling. Hence, there is contradiction between this witness and other witnesses.

* The video recording by SIT, while writing or reading the statements of the witnesses, though is part of the investigation, it is not produced on record. Hence, it should be inferred that there is something fishy in it. He has also emphasized that benefit to the accused needs to be granted for faulty investigation before SIT also.

* Exh.1529 is the SIT application, but it is quite strange that the witness is not identifying the author of the application. Hence his identity of the accused becomes doubtful.

* Since this witness was an accused in the murder trial of Ranjit, whose judgement is on record vide Exh.1532, is the PW who, though was with police at the Police Station and thereafter before the Court for his own trial of murder

of Ranjit, is not giving name of the assailant, he cannot be believed as it is unnatural conduct.

* As is stated by the witness at para-109, different accused were in different mobs hence there can never be meeting of minds amongst these accused.

* A-44 himself is held by Court as victim of riot, hence he cannot be accused of this case as his own property was burnt.

* As paragraph 115 clarifies that there was no light at the site, hence it is not possible for the witnesses to identify the accused. Hence their identity creates lots of doubt.

* There are numerous doubts on the witness being eye-witness to the incident of Ayub. Hence the accused involved by this witness should be acquitted.

(h) A-59 – PW-273 : PW-273 is the Administrative Officer of the S.T. who has stated that A-59 was on duty, but he is not an eye-witness to the incident. There is no other witness to involve A-59 in the charged offences.

This witness further states that the stocks of all kind of oil is tallying and that there was no loss of oil. This rules out the possibility of any of the accused working in S.T. to have thrown the burning rags by using the oil in the S.T.

None of the Muslim workers in the S.T. has given

any complaint against the accused, hence this accused needs to be acquitted.

(i) A-43 & PW-262 : Along with PW-262, there were police officials like PW-264, 265 and 267 on the road. They do not involve A-43 in the crime and they also did not see the accused at the site. The accused was admittedly unarmed, no overt act has been alleged against him, even according to PW-262, this accused was only talking in the mob and was hardly an onlooker. Hence, he cannot be held guilty and should be acquitted.

(j) Exh.1773 – Complaint of Naroda Patiya, Complaint of Naroda Gam, PW-262, 264 and 265 : It has been forcefully submitted that the complaint Exh.1773 is delayed, ante-dated, ante-timed, false, concocted and tainted.

(k) The attention of the Court has been invited to the complaint of Naroda Gam bearing I-C.R.No.98/02, wherein the names of these very five accused have been given. Those names have even been given in this complaint of Exh.1773. If these five accused were at Naroda Gam, they cannot be at Naroda Patiya, hence this complaint cannot be believed.

(l) The complaint of I-C.R.No.99/02, is of the rash and negligent driving by one Shaukat Nabi, which is admittedly an incident of morning. Hence that complaint is also in fact a delayed complaint. It can therefore, be believed that the complaint of this case was also filed at a belated stage.

(m) Complaint is foundation of Criminal Case and PW-262 is himself the complainant. According to the complaint and

even this witness, the five accused named in the complaint were unarmed and that there was no meeting of minds amongst them. PW-262 states about the presence of the five accused, but then PW-264 and 265 do not state about the presence of the accused and that both these witnesses have since not been declared hostile, their version should be believed in favour of the accused.

(n) PW-262 states about the gas cylinders to have been used for blast at Nurani. But in the panchnama, only three empty cylinders were noticed. Hence PW-262 shall have to explain as to where the remaining gas cylinders had gone.

(o) Paragraph 50 to 53 of PW-262 rules out the case of private firing having been done by A-2, 20 and 41, hence the prosecution case qua firing cannot be believed.

(p) Paragraph 57 of deposition of PW-262 shows that the police was unable to go inside the Muslim chawls on account of pieces of glasses, stones etc., strewn on the way. If this is believed it is not probable that the mob could have entered inside.

(q) In the panchnama, there is only mention of availability of empty gas cylinders, but the said gas cylinders could be of the residents of the Nurani Mosque and that since there is no identity about the gas cylinders, it cannot be believed that the same were looted.

(r) Paragraph 60 of PW-262 shows that this witness has not seen the dashing of tanker with Nurani, hence all the

Muslim witnesses who state so, who are all already proved to have given exaggerated version, cannot be believed.

(s) The prosecution has miserably failed to prove the site where 58 dead bodies were lying, hence there is doubt about the entire prosecution case.

(t) Since all the named accused in the complaint are social workers and were disliked by the complainant, he has falsely roped them in the crime.

Paragraph 81 of the witness shows that A-37 was not seen by this witness, hence it cannot be believed that A-37 has visited that place on the day.

(u) While reading Paragraph 44 to 48 of PW-264, the complaint is confirmed to have been delayed and antedated.

(v) PW-277 admits that because of the incidents of rash and negligent driving of TATA 407, distorted dead body of Ranjit and pulling of two Hindus at Hussain Nagar are the causes because of which Hindus were provoked and that this is clearly showing that the cause of action was provided by Muslims. The incident of 27/02/2002, the incident of rash and negligent driving of TATA 407 by the Muslim and murder of Ranjit Sinh are mitigating circumstances as a result whereof, riots took place.

Paragraph 64 shows that this witness came to Patiya after 12 midnight, hence the complaint must be after 12 midnight, on 01/03/2002.

(w) The complainant admits that the incident began at 11:00 a.m., but the complaint was registered at 08:45 p.m. hence in any case, it was very much delayed complaint.

Paragraph 71 shows that the inquest procedures were on-going at about 00:30 a.m. on 01/03/2002, but then in the inquest there is no C.R. Number. Hence the complaint could not have been filed before 06:00 a.m. on 01/03/2002.

The possibility of five accused to be onlookers, cannot be ruled out and that the defence has successfully proved that the complaint is not a credible one.

(x) Exh.1427 is non-cognizable complaint of Shaukat Nabi, who though was in custody of Naroda Police Station, complaint filed by him was taken up on 03/02/2002, which complaint should be in fact the first among all the complaints.

Exh.1773 has been verified by PW-277, Mr.Rana, who has endorsed on 28/02/2002. But, in view of his evidence, when he was at Gulmarg Society upto 12:00 midnight on 28/02/2002, he could not have come to Naroda Police Station to verify this complaint.

(y) Exh.2437 is the deposition of Mr.Mysorewala recorded in the case of Naroda Gam, which has been tendered by the A-18 along with his Further Statement. Paragraph 4 of his deposition reveals that the complaint of Naroda Patiya was delayed hence this complaint also must have been delayed.

(z) A-19 AND A-43 : A-43 has only been identified by

PW-262.

A-43 has been named by PW-262 & 266, but has only been identified by PW-262. For both these accused, there is no other PW, no overt act is alleged, they were not in possession of any weapon. Considering the same, these two accused need to be granted benefit of doubt.

(aa) A-18 : A-18 is a victim of conspiracy hatched by NGO to falsely implicate this accused. He has been targeted by NGO and that the murder of one pregnant woman Kaushar has been alleged to have been committed by him. But, then the stomach of A-18 was neither assaulted nor stabbed, which falsifies the case of the pregnant woman having been killed and stabbed by A-18 and that he has removed the foetus in her body and has even killed that foetus.

If different PWs like PW-142, 147, 149 and the husband of Kaushar, PW-225 are read together, then it is clear that this accused clearly secured entitlement for benefit of doubt as firstly, medical and ocular evidence are self-contrary, the deposition, the statements and even affidavit before the Hon'ble Supreme Court are absolutely not tallying with one another and that such record reveals the innocence of A-18.

There are numerous sets of evidence for every occurrence hence the accused are entitled to the benefit of doubt.

(ab) PW-149 and many of the PWs like him, have admitted that prior to making an application in SIT, they have not read their statement made before the Crime Branch. In this

background, it remains unexplained as to even without reading the prior statement, how the PWs have complained to the SIT that their statements were not written according to their say.

Since the prosecution has not examined the writer of numerous applications to the SIT and since the prosecution witnesses have said that they do not know the writer of their applications, it is suggestive of the foul smell in form of a conspiracy by NGO.

(ac) PW-149 has admitted to have not stated about the rickshaw while stating for the incident of Ayub. Hence this witness cannot be termed to be eye-witness to the occurrence of Ayub.

(ad) The PWs who have given applications to SIT along with their co-applicants, are stated to have not been knowing the co-applicants, hence such PW cannot be accepted as truthful witness because two contradictory things cannot go together.

(ae) It is an admitted position that the police did visit camps, statements were being recorded at Seminary, there were doctors at the camps to treat PW, there were Camp organizers, lawyers, the family members who all were in the Camps. Even the persons from the community, from the same locality, were also at the camp; different NGO and their officer bearers were coming at the camp; the Media persons were coming at the camp; Muslims used to eat in one dish, hence at least those four five Muslims who were sharing the same dish, were all present at the camp and were available at the camp.

But still the PWs did not choose to share their experiences with anyone of them. Hence it should be presumed that the PWs were never an eye-witness to the incident, but after the sting operation was over in the year 2007, the concoction started basing upon the revelation in the 'Sting Operation'. This is the reason why the prosecution story cannot be believed.

(af) PW-149 has not chosen to live in the camp and has kept a house on rental basis. She was freely going out and coming back to the Camp. It is quite unnatural that still she had neither filed any complaint nor had chosen to take advise of anyone on these aspects. (The husband of PW was working in S.T. Corporation)

(ag) Like PW-158, many of the PWs have given their statements in the year 2002, but still they have not given name of any of the accused in those statements. But suddenly after the SIT came into existence, the statements naming the accused started pouring into. This proves a serious conspiracy by NGO after obtaining the material from the 'Sting Operation' and hence these improvements should be viewed seriously and should not be believed.

(ah) PW-158 is eye-witness of incident of 'Jadi Khala', 'Kudrat Bibi' and 'Kausharbanu', whose families were with this witness and still this witness did not name any of the accused in the year 2002.

(ai) It is doubtful as to why the PWs have not given the names of the accused in their affidavit filed before the Supreme Court, when the witnesses were free and fearless and even the

NGO was with them, which was leading the cause of Muslims. This needs to be looked as doubtful conduct.

(aj) Several PWs have not stated before 2008 and stated six years after the occurrence, in 2008 and that too they spoke about the offences committed by the particular accused. The question is why those who have observed silence for the first six years should be believed ?

(ak) No PW is stating about the exact time of any occurrence, hence none of them should be believed.

Deceased Bhavani and A-25, Tiwari have human values who took care of the victims by offering them food and water, hence their humanitarian approach should not be treated as their fault. Moreover, for this very reason, they cannot be held to be a rioter.

(al) Near the Water Tank, there is 'U' shaped place where according to prosecution, numerous dead bodies were found but then for the said dead bodies the inquest shows that the dead bodies were traced from Jawannagar. This contradiction is self-speaking. Hence, the incidents as stated by the witnesses do not stand proved.

Barring one or two PWs almost all PWs have stated that the incident of 'U' shaped place had the highest dead bodies available. But it took place before sunset or before it was dark. Hence, for want of light the witnesses can never be in a position to identify the accused.

(am) The weapons contended to be with the accused, as per the account given by different PWs, have never been recovered or discovered which creates doubt on entire such story.

(an) Certain PWs went to their native State after the occurrence. Some of them have started their occupation after the occurrence and some of them were allotted new houses far from Patiya and still these witnesses did not file any complaint at their native State or did not send any complaint from their native State, all of which show that the prosecution case is not genuine.

(ao) It is alleged that A-37 has brought weapons in the tempo trax and has distributed the same. But there is no support to such a version, hence A-37 should be granted benefit of doubt.

(ap) Several PWs have stated that they heard commotion (uproar) and still they said that they have not come out of their houses which is very unnatural.

(aq) As has been proved at Paragraph 62 of the deposition of PW-198, many PWs have proved that the object of the mob was not to take revenge of the 'Godhra Carnage' but the object was to see to it that the shops should be closed which might be because of 'Bandh' (voluntary curfew).

(ar) Every PW gives different version for the figures of the rioters in the mob. Some witness saw the crane and tanker near Nurani, some also saw a woman with uniform of ladies

constable. But some PWs did not see all these, hence those who saw all these seem to be speaking imaginary version.

(as) The occurrence of 'Jadi Khala' and many such occurrences have not been seen by some of the witnesses whereas some of them did see the same. Hence both of them cannot be believed.

One who speaks lie on one occurrence, cannot be believed for any other occurrences.

(at) PW-269, Mr.Dastur and PW-284, Mr.Barot have stated that no dead body was found from well, but the PWs like PW-198 have stated that certain persons were killed and were thrown in the well.

(au) The investigating agency has not recovered the blood stained earth from the place of the offence or the earth from the 'U' shaped corner, hence the prosecution case is doubted.

(av) It cannot be believed that the PWs who do not remember the names of their neighbours of Muslim chawls, who were witnessing the incident standing beside them, can be believed to remember the accused.

(aw) PW-149 and 198 are completely proving the defence through the cross-examination.

(ax) PW-225 is not a hostile witness. This witness states that the persons who had black scarf on their faces, have committed the offence, which would mean that the accused

being tried by this Court have not committed the offence. It creates more doubt when only in the year 2008, the witnesses, for the first time, have given the name of the accused.

(ay) PW-322, Mr.Khetan has targeted A-18, 21 and 22. The Sting Operation has not been proved to be true. It is clearly designed to falsely implicate the three accused. The hard disk and pen drive were not given by Mr.Khetan to the first investigating agency. The sentences spoken by Mr.Khetan have not been reflected in the script. Hence it is not clear which sentences were spoken to induce the witnesses to implicate the accused.

The C.D. and V.C.D. of 'Sting Operation' are absolutely inadmissible in evidence.

According to the 'Sting Operation', A-18 has collected 23 revolvers, but none of them has been recovered, which also shows that there was no collection of any revolver.

(az) While taking the voice sample recording, the script prepared by F.S.L. should have been used for taking samples voice of the three accused. However, since it has not been done, it cannot be believed.

(ba) If mobile phone call details and for an illustration Exh.2194 is seen, the timing of incoming and outgoing phone calls are not exactly chronological. Hence, tampering is the conclusion. This phone details being concocted and having been created to involve the accused, it cannot be believed.

Exh.2242, the letter of SIT shows that Amrish Patel

has to be examined by the prosecution or else the mobile call details can never be believed, since he is the source to provide these documents.

These mobile phone call details are not given in certified copies, hence this record becomes doubtful.

(bb) The C.D. containing the phone call details is not with the certificate, as required under Section 65(b) of Indian Evidence Act. Considering the same, the mobile phone call details does not prove any of the prosecution case.

(bc) SIT ought to have recovered different articles by drawing panchnamas, but some material has been taken from Mr. Mal, PW-318 without drawing panchnama, hence it creates doubt.

The statements recorded for I-C.R.No.98/02 were brought by the Investigating Officer of SIT in this case, which is not proper and is creating doubt.

(bd) A-20 : PW-73 gives his first statement after three months of the incident. He also gives complaint at Exh.518 and application to SIT vide Exh.520, but he does not give name of A-20 in any of these.

PW-73 has attempted to implicate A-1, 20, 22, 25, 30, 38 and 41, but he is not good to prove guilt of any of the accused.

(be) PW-149 also attempts to falsely involve A-1, 2, 5, 10, 18, 20, 22, 26, 37, 40, 41, 44, 45 and 46, but her version is not

at all believable one, that too she involves these accused in the year 2008. Hence it becomes more doubtful.

(bf) PW-184, 202, 204, Exh.1412 etc. and more particularly paragraph 23 and 26 of deposition of PW-204 makes it clear that there was systematic conspiracy to falsely involve A-20 and that all these witnesses are got up and tutored, which shows that some agency has worked to involve the accused falsely.

The statement of PW-236 recorded only before SIT reveals, that the name of A-20 has not been revealed by this witness.

(bg) A-54 : In view of Criminal Manual, test identification parade of more than two accused should not be done and since it has been done qua A-54, the same needs serious consideration by this Court. In fact, the crimes have been committed by outsider hence this false TIP should not be believed. Moreover, while on bail, the accused were moving freely, hence their identification in Court should not be believed.

(bh) A-52 : PW-198 in paragraph 18 of deposition states that A-52 was seen with pipe in his hand whereas PW-218 and 217, both the brothers, do not support it and that PW-218 speaks of blood stained hockey in the hand of A-52 whereas PW-217 gives his evidence based on hearsay.

According to Exh.2351, the list given by I.O. Mr. S.S. Chudasama, name of Rabiya Bibi is mentioned at Sr.No.87

whose inquest was not drawn and that only burial receipt, Exh. 2357 is on record.

(bi) The death of all the 95 persons as have been shown in Exh.2351 is not disputed or denied, but the participation of the accused is disputed and is denied.

(bj) A-2, A-20, A-37 and A-41 : A-2 was not caught from the site. All the accused have been falsely involved. PW-104 involves four accused only in the year 2008. This PW shows revolver in the hands of A-41, but it is not probable that the kind of the witness would identify the weapon. Secondly, many of the PWs have supported the case of police firing and that there is no material to believe the kind of the story of private firing being advanced.

* A-37 has been falsely involved by stating that she came in Fronti Car when, as a matter of fact, A-37 was at Legislative Assembly. PW states of firing between 09:30 a.m. and 10:00 a.m., but the police record does not so suggest, hence this witness cannot be believed.

* This witness came for panchnama of his house. According to him, he told the occurrence to the Crime Branch people while drawing the panchnama. But, the same is not on record. Several PWs are stating that they have informed the incident to the Crime Branch and to Naroda Police Station, but their complaints were not registered. Since police has not been examined by the prosecution to rebut this, the theory of having given complaints by the PWs should be believed which is not produced by the prosecution and has been suppressed.

* The deposition of PW-104 is not natural and not believable one.

* PW-104 states at paragraph 68 that his application to SIT was written by Nazir and even PW-208 Nazir himself admits it. It is note worthy that this Nazir has not informed the incident of Abid to the police.

* PW-104 admits that the shop of A-2 is on Highway near Natraj Hotel. Even the shop of A-41 is also at that place. It is therefore, clear that their names have been falsely given just because their shops are on the Highway.

* PW-104 has not filed any complaint. He was at the residence of one Pratapsinh Kharadi from 28/02/2002 to 03/03/2002 and he was feeling very safe. Still this witness has not filed any complaint.

* Moreover, this witness admits that what A-37 was talking to the mob has not been overheard by the witness.

Considering all the above, PW-104 cannot be believed for any of the accused.

(bk) A-57 : Vide Paragraph 29, PW-104 has abruptly identified A-57 for the first time in the Court. According to paragraph 32, he involves all the accused in the crime basing upon his own belief and is not based on any proved fact. Hence PW-104 can never be believed for this accused.

(bl) Numerous PWs are stating that the police has not

written their statement at all. Some says they were not written according to their say, but the police says that all that what was stated by the witness was written. Hence the witnesses cannot be believed on this count.

(bm) The death of Abid, according to some PWs, was caused on road. According to some other PWs, it occurred on the road near Hussain Nagar. According to Nazir, PW-208, the dead body of Abid along with his wife was at his house early in the morning whereas according to inquest panchnama Exh.662, his death occurred at roofs of Jawan Nagar.

(bn) Almost all PWs have mentioned that in the mob, there were persons who were wearing Ganji (vest/undershirt) and Chaddi (shorts), but there is no investigation on this aspect to find out these real culprits.

(bo) PW-105 has falsely identified A-2 instead of A-44.

(bp) PW-115 has not given name of A-2 or any facts of occurrence in the first statement dated 13/04/2002 and in the ready-made complaint at Exh.749. He has only implicated A-2 for his presence in the year 2008 and that too in the mob.

(bq) PW-145 who involves names of seven accused, states the mob was of about 15000 to 20000 and police firing took place.

In paragraph 23 and 24 this witness states that he has given his complaint, has signed his complaint, but then such a complaint is not on record. Moreover, he has hidden himself on terrace and has not seen any eye-witness. Hence his

version cannot be believed.

(br) PW-143 is the witness who has given about eight statements including six statements at SIT. This is all done to add more accused on record. This witness is not giving name of any of the accused in the year 2002. The name of A-37 has been given for the first time in the year 2008. This witness is used to involve A-37. This witness talks baseless things about one Dataniya of SRP and while reading the testimony of PW-223 and 274, this witness cannot be believed.

Since A-2 has dispute about the amount of rent with this PW, he has falsely implicated A-2.

If inquest Exh.662 is read, then the occurrence of Ayub stated by this witness becomes doubtful and that this witness cannot be believed.

(bs) PW-149 : This witness shows A-2 at Nurani which is not tallying with other witnesses.

(bt) PW-204 identifies A-2 instead of A-41.

(bu) PW-236 has observed silence for six years. Though this witness has not given any application to SIT his statement has been recorded. A-2 has been identified for the first time in the Court.

(bv) The prosecution has not proved its case to prove that the same mob has committed all the crimes from morning till night. Hence, the accused cannot be joined with one

another for their alleged common object or intention.

(bw) PW-261 is mother of Mayuddin who involves A-2, A-22, A-26 and Guddu.

Postmortem note Exh.515 does not tally with the version of the PW. There is no injury certificate for this witness. The injury of Abid in the police firing stands proved by this PW.

Why this witness has not shown to the police the place where she had been hiding ? Hence it creates doubt.

This witness has not told to the police that she has seen the incident of Mayuddin from the seminary, which is an important omission.

This witness is not an eye-witness to the incident of Mayuddin who lies to falsely involve A-2.

This witness knows A-26 prior to the incident and she does not know other accused.

This witness has been suggested to have identified the accused since she was shown photographs of the accused as her another son is a press reporter.

This witness is not believable one.

(bx) On the date of the incident, the accused were not sitting in the manner as they are sitting here at the Court-House. The accused are also close to the PW in comparison

with the site of the offence. Hence identity in the Court should not be given any weightage.

(by) Mr.K.K.Mysorewala, PW-274 is biased against A-2. He has arrested A-2 on the basis of only the statement of co-accused i.e. A-3 and to justify the arrest of A-2, this witness has been got up.

The investigation of Mr.K.K.Mysorewala is malafide, dishonest, unfair and based on his bias. His investigation is full of doubt and suspicion.

(bz) The prosecution has not considered any of the previous statements while taking examination in-chief and have solely based on the statement before SIT.

(ca) PW-296, Mr.Surela, admits that had there been seminary at Hussain Nagar Gali No.2, he would have recorded in panchnama. Mr.P.N.Barot has also brought panchnama Exh. 1228 on record, has taken the photograph Exh. 2344, has also done videography but at none of these there is seminary. Hence this seminary is a creation of PW-261, which can never be believed.

(cb) Even PW-327 and PW-113 Jainul Abedin have also stated about there being no Madressa at Hussain Nagar. Hence the entire Madressa chapter is aimed to falsely implicate A-2.

(cc) A-37 :

(a) A-38, A-62 and PW-52 : PW-52 is in the habit of

giving exaggerated version. Her version is self-contradictory and the version is neither credible nor probable.

The case is that of free fight, but no investigation has been carried on that line.

(b) The visibility from the terrace where A-52 has gone, has not been examined by the investigating agency.

(c) After the incident, the witness left for Bhivandi. She has given her first statement before the SIT on 30/05/08. The question is, why did she observe silence till 2008 and why didn't she file any complaint ?

(d) Instead of A-62, she identified A-38 which is suggesting false involvement of A-62.

(e) No official proof has been collected by the investigating agency to support the version of the witness that A-62 was P.A. of A-37.

(f) The medical certificate of the witness has not been collected.

(g) As a matter of fact, police has got up this witness to create a defence about the murder of Varmaji Panwala.

(h) Vide Ex.430, the photograph of the witness in the Combat Magazine has come on record. Even this

witness has admitted that she had been out of India after 2002. The question is, why she has not filed any complaint before the reporter of Combat or even at abroad ?

(i) She admittedly did not inform the police about incident of looting etc. and that even in the camp, she did not inform the said facts. This is all quite unnatural, which suggests that the witness cannot be believed.

(j) Exh.427 is a stereo-typed application against Mr.S.S.Chudasama and Mr.K.K.Mysorewala to oppose their participation in the investigation. This application is apparently prepared by an agency or N.G.O. involved to falsely implicate the accused.

(k) PW-104, 136, 143, 149, 156, 176, 192, 198, 227 and 236 are all the witnesses who have though not named A-37 until the investigation of the SIT have falsely implicated A-37 in the charged offences. As a matter of fact, the locations of the mobile phone call details is suggestive of the fact that A-37 was never at the site.

There is inter-say discrepancies amongst the witnesses who have given different versions as to whether A-37 was near Nurani or opposite Nurani. Hence they cannot be believed and that relying upon such got-up and tutored witnesses, the case against A-37 does not get proved.

(l) The registers of the Gujarat State Legislative Assembly and the CD given along with the other material, is suggestive of the fact that upto 09:00 am, A-37 was at Gandhinagar and that thereafter, as per the mobile phone call details and other evidence, she went to Sola Civil Hospital. Hence it cannot be believed that she was at Naroda Patiya. The C.D. of the Vodafone has not been recovered by drawing panchnama and that the C.D. was received by one Mr. Gohel who has not been examined. Hence, the same cannot be believed.

The evidence of PW-321 and 327, if are seen collectively, the defence of alibi qua A-37 stands proved as paragraph 351 to 358 of PW-327 makes the things very clear.

If all these things is appreciated in true spirit, then, it is a clear case of false involvement of A-37. Hence she needs to be acquitted.

(cd) **A-38 :**

(a) PW-17 is a panch witness for the recovery of the mobile who is declared hostile. Hence the recovery of the mobile does not stand proved.

(b) The deposition of PW-34 is suggestive of the fact that the Identification parade qua A-38 is doubtful and cannot be believed. The reason being that, A-38 is the man with having mole on his face and since other

dummy persons with similar moles on their face were not kept in T.I.P. such T.I. Parade cannot be believed and cannot involve A-38 in the crime.

(c) PW-52 and 73 have absolutely falsely involved the accused and that PW-52 has identified A-38 instead of A-62.

(d) PW-135 identifies A-58 instead of A-38, hence she cannot be believed.

(e) PW-202 identified A-38 instead of A-20, who also cannot be believed. PW-237 and 245 are got-up witnesses, PW-252 is hostile and that PW-253 has not supported the prosecution case.

(f) PW-17 and 34 are hostile witnesses. Surname of one of the panch of panchnama, Exh.1868 for Mobile Instrument (Article 9) is not believable one. It is very much doubtful whether the panch has participated in drawing the panchnama as a panch or not.

(g) PW-34 is an Executive Magistrate. There are lot of erasions and manipulations in the Yadi. The instructions on the Yadis have not been complied with by the Investigating Officer. Hence, the Identification Parade cannot be held to be successful qua A-38. Even the Executive Magistrate himself states that if conditions in the Yadi are not complied with, then the Identification Parade cannot be held to be successful.

(h) If Exh.1851 which is face marks statement of the A-38 is seen, then the identification mark on his face can clearly be seen. The Executive Magistrate ought to have taken note thereof.

(i) Like PW-52, many of the witnesses have stated for the first time only in the year 2008, which is clearly an afterthought, hence doubtful. This witness does not identify A-38.

(j) PW-52 does not give name of A-38.

(k) PW-73 identifies A-12 instead of A-38. His statement was taken three months after the incident. This witness talks of deceased Bhavani and Dalpat who were kind enough to allow the persons inside the go-down to go out. Hence, Bhavani and Dalpat cannot be termed to be accused in any manner.

(l) PW-73 also talks of dashing the tanker with the Nurani Mosque. But there is no mention in the panchnama about the said thing anywhere. This man is a tutored witness and his entire version is unrealistic, exaggerated and he cannot be believed for any of the accused he named.

(m) The dead body of Jadi Khala was not found from her residence. Since the dead body cannot move on its own, the entire version of the witness seems to be got-up and concocted.

(n) When there is conflict between oral and

documentary evidence, document should always be preferred against the oral as “man may lie, but document may not”.

All the inquest panchnamas should be believed which are not tallying with the oral evidence. These inquest panchnamas are made on the spot itself and that there is no reason to disbelieve those inquest panchnamas, as the witnesses are not worthy to be believed.

(o) Certain witnesses speak of the burning rags to have been thrown from the S.T. Workshop. But since the compound wall is too high, it cannot be believed that the burning rags were thrown.

(p) PW-135, Hussainabanu gives too improbable and too unbelievable version. She speaks about the mobile instrument to have been given to advocate Mr.Mohsin Kadri in the relief camp. But Mr. Mohsin Kadri has not been examined as P.W. She is even unable to explain as to why she was unable to identify A-38. As it seems, the muddamal instrument must have been tampered. The prosecution has only attempted to prove the instrument, but the SIM Card in the instrument should have been proved by the prosecution.

(q) Moreover, it cannot be believed that though PW-135 was available, the mob has chosen only to beat and kill her brother and has not chosen even to attack this witness. It is therefore, clear that she was not present at the site where her brother was killed. This witness

has put forth concocted version and she should never be believed.

(r) PW-202 is a got-up and tutored witness who identified A-38 instead of A-20.

(s) PW-245 and 237 also cannot be believed. PW-245 tells about a chit given to Shri Pandey, Police Commissioner wherein the incoming and outgoing telephone calls of the mobile instrument were noted. Here, neither the chit is on record nor Shri P.C. Pandey has been examined as a witness. Hence, there are lot many doubts on record, which are capable to create many doubts against the prosecution case. Hence, all such version which are self-contradictory and inconsistent to one another, cannot be believed.

(ce) A-41 :

(a) Certain witnesses do not include the accused upto May-2002. Such a belated statement itself creates doubt and should not be believed.

Discovery of sword from this accused from the open and accessible place, cannot be believed.

No overt act by this accused has been exhibited.

(b) PW-2, 73, 108, 109, 113, 114, 115, 145, 149, 167, 174, 175, 184, 188, 189, 190, 192, 198, 202, 204, 211, 230, 233, 258 and 275 are all inconsistent to each other. Hence, no case is termed to have been proved

against A-41.

(cf) The accused for whom only one PW has been examined, should be given benefit of doubt, as in light of the settled legal position, at least four witnesses should have consistently stated about participation of the accused in the crime as it is a communal riot case.

(cg) A-17, 21, 56 and 61 have been falsely roped into the crime through the statement in the year 2008. The affidavit of Rafiqanbanu, who is also examined as witness by the prosecution, speaks lie and hence is not reliable. She identified A-25 instead of A-26.

PW-142 is absolutely not credible who did not give the name of A-61 in the year 2008 and PW-177 identified A-61 for the first time only in the Court. Hence, no value can be attached to the same.

(ch) A-44 :

(a) Discovery of sword from the accused is from open and accessible place which is absolutely not trustworthy. Moreover, the PWs who are involving A-44 are also not tallying to each other.

(b) PW-52 gives name of A-44 for the first time in the year 2008.

(c) PW-105 gives hearsay evidence.

(d) PW-144 and 145 talks about the role of A-44 for

the damages only.

Several witnesses have not identified A-44 in the Court and have identified A-17 instead.

(e) A-1, 2, 5, 10, 18, 20, 22, 26, 37, 40, 41, 44, 45 and 46 have been identified by PW-149, but it is not possible to identify 14 accused by anyone.

(f) It is stated by PW-157 that the stone-pelting was done from the terrace of accused Tiniya, but none of the witnesses support this version. Hence it cannot be believed.

(g) PW-169 gives names of many accused, but identifies none whereas PW-175 gives the statement after three months of the incident.

(h) PW-179 does not identified A-44.

(i) PW-188, 233, 234, 236, 258, 260, etc. have roped the A-44 in the year 2008 and till then no discloser has been made by the witness.

(j) PW-235 has introduced the accused as Bipin Gujarati, but in fact the name of the accused is Bipin Panchal. Hence the mention of the name creates doubt.

(k) PW-235 and 243 have not identified A-44 before the Court, but identified A-17 in the Court. Even PW-266, police witness identified A-44 instead of A-19.

Considering all the above submissions, all the accused mentioned herein above and accused No.44 should be granted benefit of doubt.

(ci) For all the accused, there is no specific, reliable, individual involvement in the charged offences. The weapons much talked about, have not at all been recovered. The allegations against the accused are general, the incidents mentioned are concocted, truth and falsehood have been mixed up by every witness. The fact and circumstances, create many reasonable doubts, the benefit of which should be given to the accused. Not only that, there are many sets of evidence, very brilliant possibilities of holding two views and that the recovery or discovery are not at all trustworthy and that in absence of Test Identification parade, nothing further can be done.

It has been forcefully submitted by the Learned Advocate Mr.Kikani that the accused are indeed innocent, have been made victims of personal enmity of the witnesses for the accused. The witnesses were out to falsely implicate all the accused, but since their own oral version is full of doubt upon considering all the submissions, all the accused should be acquitted.

(cj) **Learned advocate Mr.H.S.Ravat** states that he adopts all the arguments advanced by L.A. Mr. N.M.Kikani and that he has nothing to add or elaborate. He has also urged to acquit all the accused.

O. Defence Submissions (L.A. Mr. K.N. Thakur) :

(27) Learned advocate Mr. K.N.Thakur has submitted for the accused No. 3, 4, 10, 12, 33, 49, 57 and 60 as under.

(a) What is important is why the incident in question dated 28/02/2002 took place. It is known that Godhra Carnage has created anger and provocation in Hindu Society, but the people have assembled on 28/02/2002 because the Bandh was declared by V.H.P. and people were curious enough to know as to what is happening. On account of Bandh, nobody was to go for their job or business and that the gathering was only for the curiosity.

It is on account of above reason, none of the accused who was standing in large scale gathering, can be implicated in the charged offences and more particularly for hatching the conspiracy and for being member of unlawful assembly.

After the incident of Godhra Carnage, people were already provoked and have gathered. At that time, the incident of Tata 407 has taken place, wherein one Hindu was killed. Hence the provocation went to its climax and that if the incidents of Godhra Carnage and Tata 407 would not have taken place, the incidents in question would not have occurred.

(b) **A-3 :**

(a) PW-264 and PW-117 have given contradictory versions. Both of them are also not tallying with PW-274 and that it is only PW-264 who has seen the accused. Hence A-3 cannot be said to have been implicated in the crime. PW-264 is a policeman and as

Exh.1825 shows, his duty was at a different place. His version therefore, becomes doubtful.

(b) Moreover, it is worthy to be appreciated that except the policeman, no victim is implicating the accused. There is no evidence by which it can be said that A-3 was at the site on the date and, therefore, A-3 is entitled to the benefit of doubt who needs to be acquitted.

(c) PW-274 states that the name of A-2 was given by A-3. But when A-2 was already arrested, how A-3 can give the name.

(d) PW-274 has done faulty and malice investigation. According to him, he has registered 8 cases for violating curfew order and 35 cases for Section 135. But the moot question is why these 43 persons have not been made accused in this case, though they were found with weapons.

(c) **A-4 :**

(a) Out of the witnesses who involved A-4, PW-116, 117 and 197 do not identify A-4. A-4 has only been identified by PW-177 and PW-238.

(b) The witnesses who do not know A-4, cannot implicate A-4.

(c) PW-177 is not a credible witness whereas the PW-

238 involves A-4 for the first time in the year 2008. The PW-238 only says that A-4 was pointing, but it is not clear as to he was pointing to whom, how he has pointed and what was the effect of his pointing. Hence, he is entitled to benefit of doubt qua the witness.

(d) Along with the Further Statement, the accused has produced C.D. of the marriage wherein he was present. The C.D. was exhibited to prove the presence of A-4 in the marriage and that it was submitted that alibi of A-4 is clearly established, hence benefit should be granted to A-4.

(d) **A-10 :**

(a) PW-145, 209, 212, 274 are inconsistent with each other hence, none of them can be believed.

(b) PW-149 gives the name, but unable to identify A-10.

(c) PW-156 has stated before the previous investigating agency that he does not know any person from the mob whereas he gives name of A-10 in the year 2008 which cannot be believed.

(d) PW-175 has seen A-10 with pipe. The mob was burning the dwelling houses, but A-10 was not burning or was not assaulting hence PW-175 does not help.

(e) PW-182 does not disclose name in the SIT, but

previously this witness has given name of A-10, hence he cannot be believed.

(f) PW-184 speaks contradictory with PW-264, hence both cannot be believed.

(g) PW-209 and 212 are the two sisters, one of whom jumps the wall which is improbable. Her presence near the water tank cannot be believed. None of them had seen any dead bodies, which is quite surprising.

(h) Exh.1532 is the Judgement of the case which is about the murder of Ranjit. In this case, PW-213 is accused. Hence his version can never be believed or can never be based to convict any of the accused.

(i) PW-189 and 175 are contradictory to each other and that both of them cannot be believed.

(e) **A-12 :**

(a) There is no evidence against A-12.

(b) There is also contradiction between the deposition of PW-267 and PW-274 about the working of wireless line for which reason, none of them should be believed.

(f) **A-33 :**

(a) Out of the four PWs, viz. PW-200, 213, 227 and 232, three of the PWs have not identified the accused.

Only PW-213 has identified the accused who is accused of a murder trial, hence he should not be believed.

(g) **A-49 and 57 :**

(a) None of the PW has deposed against the accused. No participation or presence in the mob has been established. They were at their job, hence no sufficient evidence can be said to have been collected by the prosecution.

As PW-327 says the witness involving the accused had died and that there now remains no direct evidence qua A-49 and 57, they should be given benefit of doubt.

(h) **A-60** :

(a) PW-37, 209, 212 and 274 are not worthy to be believed and that except, PW-37, none has identified this accused. Hence no PW remains against A-60. He, therefore, should be given benefit of doubt.

(i) L.A. Mr.Thakur states that he adopts all the arguments made by all the learned advocates for the defence and that the case against none of the accused stands proved beyond reasonable doubt; the accused have been falsely implicated and that merely possessing weapon cannot decide the intention or object of the accused and that all the accused needs to be granted benefit of doubt. Mr.Thakur has relied upon the following decisions.

(1) 2010 SAR (Criminal) 553 Supreme Court in the case of Eknath Ganpath Aher & Ors. Vs. State of Maharashtra & others.

(2) 2011 SAR (Criminal) 163 Supreme Court in the case of Sajjan Sharma Vs. State of Bihar.

(3) 2011 SAR (Criminal) 642 Supreme Court in the case of Jalpat Rai & Ors. Vs. State of Haryana.

(4) 2012 Cri.L.J. 665 (Supreme Court) in the case of Gurmail Singh Vs. State of Punjab.

(5) 2010(2) CACC 41 (Supreme Court) in the case of Adalat Pandit & another Vs. State of Bihar.

(6) 2011 (1) CACC 457 (Jhar.) in the case of Balram Lohar and another Vs. State of Jharkhand.

(7) 2010 SAR (Criminal) 508 Supreme Court in the case of C. Magesh & Ors. Vs. State of Karnataka.

(8) 1997-AIR-(SC)-1654 in the case of State of Uttar Pradesh Vs. Dan Singh.

(P) The Summary Of Charge - EXHIBIT 65 :

(a) The Charge has been jointly framed for 62 accused who have been tried before this Court. The charge is to the effect that the 62 accused and the 10 deceased accused mentioned at paragraph 3 of the charge, viz. Bhawani, Dalpat, Guddu, etc. and the three absconding accused shown at paragraph No.3 of the charge in the company of thousands of unknown accused have committed the charged offences.

(b) The date of the occurrence was 28/02/2002, the time of

the occurrence was 8:00 a.m. to 10:00 p.m. of that day and the site of the offences are, Nurani Masjid - being a religious place for the minority and all the different Muslim Chawls situated behind the Nurani and opposite Nurani Masjid, and the khancha area / water tank area situated near Gopinath Society and Gangotri Society which both, are adjoining Hindu societies to the Muslim Chawls, all of which Muslim Chawls are situated in a line, facing S.T. Workshop wall which have been mentioned in all its detail mainly at paragraph No.6 of the Charge.

(c) The motive to commit the offence was to take a revenge of the Godhra Carnage as, in the Sabarmati Express, Kar Sevaks were burnt alive on 27/02/2002.

(d) The common intentions of all the accused to do illegal acts were mainly to ventilate the anger against Godhra Carnage, to settle the score with Muslim Community, to rise the death toll, several times more than the death toll of the Godhra Carnage, to do away maximum Muslims, to terrorize Muslims, to destroy, ruin and damage the properties of the Muslims, to revenge murders of Kar Sevaks for more murders of Muslims.

(e) The accused were sharing common objects / their common designs. These objects are the vital ingredients as are essential to hold that the accused have formed unlawful assembly. The common objects of the assembly of more than five persons, were to commit mischief, other offences like offences against human body, offences against property, offences against public tranquility, offences relating to religion provided in Indian Penal Code and offences under the B.P. Act,

etc. by the means of criminal force, show of criminal force to the Muslims, etc.

(f) As mentioned in the Charge, on that day the properties of the Muslims were damaged and destroyed, the rioters have possessed and used deadly weapons in the communal riot, all the offences were committed under leadership, provocation, instigation of certain accused, it was in pursuance to the criminal conspiracy hatched by the accused and that certain accused have abetted and instigated the other accused to do all the charged offences and to form unlawful assembly.

(g) The Charge is to have murdered about 96 Muslims, during different occurrences narrated in the Charge, complaint, etc. It is also related to commission of rape, gang rape and outraging the modesty of Muslim women.

(h) The Charge is also for commission of offences against property, human body, like causing simple hurt to grievous hurt, murder, attempt to murder, rape, gang rape, offences against public tranquility, offences relating to religion, etc. for which, the commission of the offences have been charged to have been committed to read it with Sec.149 and/or Sec.120-B and / or Sec.34 of the Indian Penal Code, etc. The emphasis is on the joint liability of the accused for all the offences committed.

(i) As has been clarified in the Charge itself, the offences by the accused were committed in consequence of abetment and instigation which all, were committed in pursuance of the conspiracy hatched by the accused.

(j) The charges of abetment, abetment by instigation and the offences to have been committed in pursuance of the conspiracy have been included in the Charge itself.

(k) The charge is also on the base that though, the offences during the entire day have been committed at different time and at different places, they all form part of one single continuous, same transaction.

The sections on which the charge has been framed has been reproduced at Para-10 of this part of the judgement.

It has been kept in mind that the offence of abetment is included in offence of conspiracy. The chapter on abetment do provide that, it shall have application in a case when, there is no express provision for abetment of a particular offence and offences abetted if are committed in consequence of the abetment. The commission of offence in consequence of abetment is, when the commission of offences are because of the instigation provided or when, it is committed in pursuance of the conspiracy hatched.

It is settled position of law that, in such kind of abetment, presence of the abettor accused at the time and place where the offence has been committed is not an essential ingredient. The abettor is liable for the same punishment which may be inflicted to the principal offender.

The prosecution through its about 173 victim PW has proved beyond all reasonable doubt that the date of the

offences in the communal riot was 28/02/2002, the time was 9.00 a.m., 9.30 a.m. onwards up to 6.00, 6.30 p.m. or so and the site of the offences committed spread through out the day were Nurani Masjid, Muslim Chawls behind Nurani, Muslim Chawls, Opposite Nurani Facing S.T. Workshop Wall and the Water Tank near or between hindu societies situated at the end of Muslim chawls viz. Gopinath and Gangotri Society.

In light of the charge as mentioned above and in light of the facts, circumstances, oral evidence, etc. came on record during the entire trial, following points for determination are needed to be replied by this Court. The points for determination are as under:

(Q) POINTS FOR DETERMINATION :

Point -1 **Whether the Prosecution proves beyond reasonable doubt that, on the date, time and place of the offence and in the facts and circumstances of this case, any criminal conspiracy has been hatched by the accused (Part-1) and whether any offences were committed in consequence of abetment and/or instigation and/or in pursuance of the conspiracy hatched by the accused or not? (Part-2)**

If yes, when the conspiracy was hatched, the offences mentioned in this point for determination were committed by which of the accused? (Part-3)

(With reference to Sec.-120-B of I.P.C. and for the offences committed R/w it.)

Point -2 **Whether the Prosecution proves beyond reasonable doubt that, on the date, time and place of the offence, the accused have formed unlawful assembly, or not and whether the said unlawful assembly has committed offences against the public tranquility or not? (Part-1)**

If yes, the unlawful assembly was formed by which accused (Part-2 of the point) and which offences against public tranquility were committed by which of the accused as a member of the unlawful assembly? (Part-3 of the point)

(With reference to Sec.-141, 143, 144, 145, 147, 148 and offences committed to be read with Sec.- 149 of I.P.C.)

Point -3 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, whether the accused have committed offence of contempt of the lawful authority of public servant or no ? If yes, which of the accused has committed which offences? Or was it committed by unlawful assembly or in pursuance of the**

conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec.186, 188 of I.P.C., Sec. 186 R/w. 149, 188 R/w. 149, 186 R/w. 120-B, 188 R/w. 120-B of I.P.C.)

Point -4 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, the accused have committed offences relating to religion or not?**

If yes, which of the accused have committed the offence and which of the offences have been committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec.295, 295A and 298 of I.P.C., Sec. - 295 R/w. 149, 295 R/w. 120-B, 295-A R/w. 149, 295-A R/w. 120-B, 298 R/w. 149 and 298 R/w. 120-B of I.P.C.)

Point - 5 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any of the accused has voluntarily caused hurt with intent to prevent**

or to deter public servant from discharging his duty as public servant or not? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec.- 332 of I.P.C., Sec. - 332 R/w. 149, 332 R/w. 120-B of I.P.C.)

Point -6 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, the accused have committed offences of robbery and dacoity or not? If yes, which of the accused have committed the said offence and which offences have been committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?**

(With reference to Sec.- 395, 396, 397 and 398 of I.P.C., Sec. - 395 R/w. 149, 395 R/w. 120-B, Sec. - 396 R/w. 149, 396 R/w. 120-B, Sec. - 397 R/w. 149, 397 R/w. 120-B, Sec. - 398 R/w. 149 and 398 R/w. 120-B of I.P.C.)

Point-7 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, the accused have**

committed any offence related to mischief or not? If yes, which accused has committed the offence and which of the offences were committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec.- 427, 435, 436 and 440 of I.P.C., Sec. - 427 R/w. 149, 427 R/w. 120-B, Sec. - 435 R/w. 149, 435 R/w. 120-B, Sec. - 436 R/w. 149, 436 R/w. 120-B, Sec. - 440 R/w 149 and 440 R/w. 120-B of I.P.C.)

Point-8 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of offence, the accused have committed any offence against the public tranquility or not? If yes, which accused has committed the offence and which of the offences were committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?**

(With reference to Sec. - 153, 153-A, 153-A (2) of I.P.C., Sec. - 153 R/w. 149, 153 R/w. 120-B, Sec. - 153-A R/w. 149, 153-A R/w. 120-B, Sec. - 153-A (2) R/w. 149, 153-A (2) R/w. 120-B of I.P.C.)

Point-9 **Whether the prosecution proves beyond**

reasonable doubt that on the date, time and place of offence, the accused have committed any offence related to causing voluntarily hurt, causing hurt by dangerous weapons, voluntarily causing grievous hurt and voluntarily causing grievous hurt by dangerous weapons, or by means of fire, etc. or not? If yes, which accused has committed the offence and which of the offences were committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec. - 323, 324, 325 and 326 of I.P.C., Sec. - 323 R/w. 149, 323 R/w. 120-B, 324 R/w. 149, 324 R/w. 120-B, 325 R/w. 149, 325 R/w. 120-B, 326 R/w. 149, 326 R/w. 120-B of I.P.C)

Point-10 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence any of the accused has done any offence with intend to prevent child being born alive or to cause it to die after birth, or not? If yes, which accused did that offence? If no, any other offence has been committed with reference to the incident of slitting open stomach of the pregnant woman or not? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes,**

which accused are held guilty for the offence?

(With reference to Sec. - 315 of I.P.C., 315 r/w. 149, 315 r/w. 120-B or any other offence r/w. 149 and or 120-B)

Point-11 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence any offence of rape or gang rape by victimizing any Muslim woman was committed or not? If yes, by which accused? Whether any occurrence of assaulting or using criminal force to any Muslim woman or small Muslim girls with intent to outrage her modesty has taken place or not? If yes, by which accused?**

(With reference to Sec. - 354, 376 and 376 (2) (g) R/w. Sec.-34 of I.P.C.)

Point-12 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any offence of attempting murder of Muslim victim was committed, or not? If yes, which accused has committed the offence and which of the offences were committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?**

(With reference to Sec. - 307 of I.P.C., Sec.- 307 R/w 149, 307 R/w. 120-B of I.P.C.)

Point-13 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any offence of murder of any Muslim victim whether was committed or not? If yes, which accused has committed the said offence? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?**

(With reference to Sec. - 302 of I.P.C., 302 R/w 149, 302 R/w. 120 – B of I.P.C.)

Point-14 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any accused has committed an offence u/s. 135 (1) of the Bombay Police Act or not?**

(With reference to Notification EXH.1579 of the Police Commissioner, Ahmedabad.)

Point - 15 **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any of the accused has caused disappearance of evidence of offence to screen the offenders or not? Or was it**

committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec.- 201 of I.P.C., Sec.- 201 R/w 149 , 201 R/w 120-B of I.P.C.)

Point - 16 What is the final order?

All these points for determination have been discussed and decided at Part-7 of the Judgement.

(Q) ANSWERS TO THE ABOVE POINT OF DETERMINATION RAISED :

(1) Point No.1 :

Part-(1) In the facts and circumstances on 28/02/2002, when the accused met at Muslim Chawls, opposite Nurani Masjid, at Nurani and at S.T. Workshop, the conspiracy was already hatched, by the 27 accused. **In affirmative**.

Part-(2) The conspiracy was hatched any time after the Godhara occurrence on 27/02/2002 and before 9.30 a.m. of 28/02/2002 when the conspirators met at the site.

Part-(3)(a) **The criminal conspiracy was hatched by A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33,**

34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, 62 and deceased A-35, Guddu, Bhavani, Dalpat, Jashvant and Ramesh (27 live accused and the 6 deceased accused have hatched the criminal conspiracy). These live accused are held guilty and shall be punished u/s.120-B of the Indian Penal Code and also shall be punished for the proved offences r/w. Sec.120-B of I.P.C.

Part-(3)(b) **These 27 accused shall also be liable to be punished for all the offences committed during the entire day, whether committed in presence of the accused or not read it with Sec.120-B of the Indian Penal Code.**

Part-(3)(c) **All the other accused charged, shall be entitled to the benefit of doubt qua the charge of conspiracy viz. A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60, A-61 (34 alive accused).**

(2) Point No.2 :

(2.1) It is held that A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 accused) have

formed unlawful assembly who all did overt act.

(2.1.1) Upon analysis of all material on record it stands proved that A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, A-62 (in all 26 live accused) and 6 deceased accused were the members of the unlawful assembly in the morning viz. from about 9:30 a.m. to 12:00 noon.

(2.1.2) Upon analysis of all material on record it stands proved that A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44 and A-46 (in all 14 live accused) and deceased were the members of the unlawful assembly from about 12:00 noon to 5:00 p.m.

(2.1.3) Upon analysis of all material on record it stands proved that A-1, A-2, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-28, A-30, A-40, A-41, A-44, A-52, A-53, A-55, A-60 (in all, 18 live accused) and deceased were the members of the unlawful assembly in the evening from about 5:00 p.m. onwards.

(2.1.4) Upon analysis of all material on record it stands proved that A-37 was not a member of the unlawful assembly but was a kingpin and one of the principal conspirators.

(2.1.5) Upon analysis of all material on record it stands proved that A-4, A-28 and A-30 for the noon occurrence and A-28, A-30, A-53 and A-60 for the evening

occurrence were only the members of the unlawful assembly but, they were not the conspirators.

(2.1.6) Upon analysis from the oral evidence of the victims it stands proved that A-1, A-2, A-10, A-22, A-25, A-26, A-41 and A-44 are the 8 accused who remained members of the unlawful assembly throughout the day and they have not discontinued with the assembly.

From his extrajudicial confession A-21, is inferred to be a conspirator as well as a member of the unlawful assembly.

A-18 is the principal conspirator like A-37.

(2.2) A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are, hereby held guilty for the offences punishable u/s.143 r/w. Sec.149.

A-3, A-6, A- 7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted benefit of doubt qua charge u/s.143 r/w. Sec.149.

(2.3) They are A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused), all members

of unlawful assembly are held guilty for offence u/s. 144 r/w. S-149 I.P.C.

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted benefit of doubt qua charge u/s.144 r/w. Sec.149.

(2.4) Benefit of doubt is granted to all the accused A-1 to A-62 (except A-35, who was abated) as applicable qua the **charge u/s.145 r/w. Sec.149 of the Indian Penal Code**.

(2.5) A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are, hereby held guilty for the offences punishable u/s.147 r/w. Sec.149 of the I.P.C.

A-3, A-6, A- 7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted benefit of doubt qua charge u/s. 147 r/w. Sec.149.

(2.6) A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are, hereby held guilty for the offences punishable u/s.148 r/w. Sec.149 of the

I.P.C.

A-3, A-6, A- 7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted benefit of doubt qua charge u/s.148 r/w. SEC.149.

(3) Point No.3 :

(3.1) A-1 to A-62 (except A-35) have been granted benefit of doubt qua charge u/s.186 r/w. Sec.120-B and Sec.186 r/w. Sec.149 of the I.P.C. as the case may be.

(3.2) A-1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 26, 28, 30, 40, 41, 44, 46, 52, 53, 55 and 60 (total 21 accused) are held guilty for the offence u/s 188 of I.P.C.

A-3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 27, 29, 31, 32, 33, 34, 36, 37, 38, 39, 42, 43, 45, 47, 48, 49, 50, 51, 54, 56, 57, 58, 59, 61 and 62 (total 40 accused) are entitled for benefit of doubt qua charge u/s 188 of I.P.C.

(4) Point No.4 :

(4.1) A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (27 live accused) shall be punished for commission of the

offence u/s.295 r/w. Sec.120-B of the Indian Penal Code.

A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60 and A-61 (34 live accused) are granted benefit of doubt, qua charge u/s.295 r/w 120-B of I.P.C.

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (26 live accused) shall be held guilty for the offence u/s.295 r/w. Sec.149.

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 37, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (35 live accused) are granted benefit of doubt for the offence u/s.295 r/w. Sec.149 of I.P.C.

(4.2) Granted benefit of doubt viz. accused No.1 to 62 (except A-35 who was abated) for the charge u/s.295-A r/w. Sec.149 and r/w. Sec.120-B of the I.P.C. etc.

(4.3) Granted benefit of doubt to A-1 to A-34 and A-36 to A-62 qua the charge framed u/s.298 r/w. Sec.149 and Sec.298 r/w. Sec.120-B of the Indian Penal Code.

(5) Point No.5 :

(5.1) Granted benefit of doubt qua the charge of the

offence u/s.332 to A-1 to A-34 and A-36 to A-62 r/w. Sec.149 and 332 r/w 120-B of the Indian Penal Code.

(6) Point No.6 :

(6.1) All the accused (except A-35) are entitled to benefit of doubt u/s.395 to 398 all r/w Sec.120-B and also r/w. Sec.149 of the Indian penal Code.

(7) Point No.7 :

(7.1) A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (all the 26 live accused of the unlawful assembly formed in the morning and A-37) are held guilty for the offences committed in the morning u/s.427, 435, 436 and 440 r/w. Sec.120-B of I.P.C. (27 live accused).

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (34 accused) are granted benefit of doubt for the offence u/s.427, 435, 436 and 440 r/w. Sec.120-B of I.P.C.

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (Total 26 accused) are held guilty for the morning occurrence for the offence u/s.427, 435, 436 and 440 r/w. Sec.149 of I.P.C.

A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44 and A-46 (Total 14 accused) are held guilty for the noon occurrence u/s.427, 435, 436 and 440 r/w. Sec.149 of I.P.C.

A-1, 2, 10, 18, 20, 21, 22, 25, 26, 28, 30, 40, 41, 44, 52, 53, 55 and 60 (Total 18 accused) are held guilty for the evening occurrence u/s.427, 435, 436 and 440 r/w. Sec.149 of I.P.C. (Total guilty 31 accused).

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 live accused) are granted benefit of doubt for the charge u/s.427, 435, 436 and 440 r/w.Sec.149 of the Indian Penal Code.

(8) Point No.8 :

(8.1) A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, A-62 and deceased accused (in all 27 live accused and other dead) are held guilty for the offence u/s. 153 of I.P.C. R/w. 120 B of I.P.C.

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (34 accused) are entitled to the benefit of doubt u/s.153 r/w. Sec.120-B of I.P.C.

A-1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 26, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (31 accused) are held guilty u/s.153 r/w. Sec.149 of I.P.C.

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (Total 26 accused) are held guilty for the morning occurrence u/s.153 r/w. Sec.149 of I.P.C.

A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44 and A-46 (Total 14 accused) are held guilty for the noon occurrence u/s.153 r/w. Sec.149 of I.P.C.

A-1, 2, 10, 18, 20, 21, 22, 25, 26, 28, 30, 40, 41, 44, 52, 53, 55 and 60 (Total 18 accused) are held guilty for the evening occurrence u/s.153 r/w. Sec.149 of I.P.C.

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59, and A-61 (in all 30 live accused) have been granted benefit of doubt for charge u/s 153 r/w. Sec.149 of I.P.C.

(8.2) A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, and A-62 (27 live accused) are held guilty u/s.153-A r/w. Sec.120-B of the I.P.C.

A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60, A-61 (34 accused) are granted benefit of doubt qua the charge of S-153-A r/w. Sec.120-B of I.P.C.

A-1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 26, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (31 accused) are held guilty (for the occurrence they were present) for the offence u/s. 153-A r/w. Sec.149 of I.P.C.

A-3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 29, 31, 32, 36, 37, 43, 48, 49, 50, 51, 54, 56, 57, 59 and 61 (30 accused) are granted benefit of doubt for the offence punishable u/s.153-A r/w. Sec.149 of I.P.C.

(8.3) A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, A-62 (totally 27 live accused) are held guilty for the offence u/s 153 -A (2) of I.P.C. R/w Sec. 120 B of I.P.C.

A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60 and A-61 (totally 34 accused) have been granted benefit of doubt qua the charge u/s.153-A(2), r/w. Sec.149, r/w. Sec.120-B of I.P.C.

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (26 accused) are held guilty for the offence punishable u/s.153-A(2) r/w. Sec.149 of I.P.C.

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 37, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (35 accused) are granted benefit of doubt for the offence punishable u/s.153-A(2) r/w. Sec.149 of I.P.C.

(9) Point No.9 :

(9.1) A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 & A-62 (31 live accused) are held guilty for (for the occurrence they were present) commission of offences punishable u/s.323 to 326 r/w. Sec.149 of the I.P.C.

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 live accused) are held to be entitled to benefit of doubt u/s.323 to 326 r/w. Sec.149 of the I.P.C.

A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, A-62 (27 live accused) are held guilty for commission of offences

punishable u/s.323 to 326 r/w. Sec.120-B of I.P.C.

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (34 live accused) are held to be entitled for benefit of doubt u/s.323 to 326 r/w. Sec.120-B of I.P.C.

(10) Point No.10 :

(10.1) Accused No.1 to 62 (except A-35 since abated) are granted benefit of doubt qua charge of Sec.315 r/w. Sec.149 and Sec.315 r/w. Sec.120-B but, the 18 live accused are held guilty u/s.302 r/w. Sec.120-B, Sec.302 r/w. Sec.149 has been held to have been proved.

(10.2) The members of unlawful assembly present in the evening occurrence are held guilty for Sec.302r/w. Sec.149 of I.P.C. for the murder of Kausharbanu only.

They are A-1, 2, 10, 18, 20, 21, 22, 25, 26, 28, 30, 40, 41, 44, 52, 53, 55 and 60 (18 live accused).

A-3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 27, 29, 31, 32, 33, 34, 36, 37, 38, 39, 42, 43, 45, 46, 47, 48, 49, 50, 51, 54, 56, 57, 58, 59, 61 and 62 (live 43 accused) are granted benefit of doubt for the offence u/s.302 r/w. Sec.149 of I.P.C.

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62

(27 live accused) being conspirators are held guilty for the offence u/s.302 r/w.120-B of I.P.C. for murder of Kausharbanu only.

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60, 61 (live 34 accused) are granted benefit of doubt qua charge of Sec.302 r/w. Sec.120-B of I.P.C. for this murder only.

This murder of Kausharbanu has been considered while deciding Point of Determination No.13 on murders for the purpose of conviction and sentence.

(11) Point No.11 :

(11.1) A-1, A-10, A-26, A-28, A-30, A-40, A-42 and A-48 have all been granted benefit of doubt for the charge u/s.354 and 376(2)(g) r/w. Sec.34 of I.P.C.

(11.2) A-22 shall be granted benefit of doubt for the charge qua u/s.376(2)(g) of I.P.C.

A-22 is held guilty for the offence committed u/s.354 and 376 of I.P.C.

(12 & 13) Point No.12 & 13 :

This Court, therefore, holds that A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (27 live accused) are held

guilty for commission of offence under section 302 and Sec.307, both read with section 120-B for their act as conspirators. (27 live accused).

Accused No.3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60 and A-61 have been granted benefit of doubt qua charge under section 302 and Sec.307, both r/w. Sec.120-B of IPC. (34 live accused).

Accused No.1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are hereby held guilty for commission of offence under section 302 and Sec.307, both read with section 149 as members of unlawful assembly. (31 live accused).

Accused No.3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 have been granted benefit of doubt for the charge under section 302 and Sec.307, both read with section 149 of the IPC. (30 live accused).

(14) Point No.14 :

(14.1) As decided at Point No.2.3 herein above, all the 31 accused members of unlawful the assembly have been held guilty u/s.144 have also been held guilty for the

offence u/s.135(1) of B.P. Act, rest 30 accused are granted benefit of doubt.

(15) Point No.15 :

(15.1) All the accused are hereby, granted benefit of doubt qua the charge u/s.201, r/w. 149 and 201 r/w 120-B of the Indian Penal Code.

(16) Point No.16 :

(16.1) As per the final order.

~:: PART - 2 ::~

CHAPTER - I : (A) COMMON POINTS ON CROSS-EXAMINATION OF MANY OF THE PWS AND COMMON ARGUMENTS FOR MANY OF THE ACCUSED, SCALES FOR APPRECIATION OF EVIDENCE AND OBSERVATION OF THE COURT

INTRODUCTION :

(a) The PWs were confronted on numerous common questions which were asked to numerous victim and occurrence witnesses to elicit common information from different PWs to point out the defence. Basing upon these questions, in the cross-examination, which were common

questions, common arguments were advanced by the defence. As such while appreciating the witnesses individually, the replies given by the witnesses shall have to be appreciated, but when defence has asked common questions to the PWs, defence has chosen to make common submission, it is thought just and proper to deal with those parts of the cross-examination of different PWs in common in this part of the Judgement. Hence for the sake of brevity, to avoid repetition and since there are numerous common questions asked to many PWs to falsify the PW, to highlight improbability, to challenge veracity and to impeach the credit etc. of the PW, it is thought fit to deal with those common questions here itself so that individual appreciation of evidence of all such PW can be avoided on the aspects which are already dealt with here.

(b) The religious place of Muslims is Nurani Masjid situated in the western direction which was in the direction of opposite S.T. Workshop and opposite the Muslim chawls. S.T.Workshop and the Muslim chawls of the site of the offence are situated in a line, the wall of the S.T. Workshop is facing the entrance of the Muslim chawls. There are numerous Muslim chawls situated here where most of the inhabitants are Muslims. At the end of the trial, it is found that these Muslim chawls which were popularly known as Hussain Nagar Ni Chali or Chawl, Jawan Nagar Na Chhapara or Jawannagar etc. are the most affected area in the communal riot. The another most affected part is Nurani Masjid itself. Behind the Muslim chawls, and in a way adjoining to the Muslim chawls, Hindu societies are situated, the Muslim chawls begins on the National Highway and ends when Gangotri Society begins. In between, there are numerous chawls having varieties of nomenclature, but it is

commonly known as Hussain Nagar Ni Chawl or Jawan Nagar Chhapara or Jawannagar.

The Nurani Masjid has been referred in the entire Judgement, either as Nurani Masjid or Masjid or Mosque.

The occurrences were found to have been spread during the entire day beginning from 09:30 a.m. to atleast upto 08:00 p.m. of 28/02/2002. These occurrences can easily be classified as morning occurrences, noon occurrences and evening occurrences. This classification has been discussed in the chapter of occurrence witnesses at Part-5. With the above background, following common questions of the cross-examination, its replies by the PW, its common appreciation and the common arguments put up by the defence have all been dealt with in this Chapter of Part-2.

1. NON-PRODUCTION OF INJURY CERTIFICATES, HISTORY BEFORE DOCTOR :-

(1) It seems that those who did not have very serious injuries and had no go but to take the indoor treatment, were only taken to the hospitals and those, whose injuries were minor or could be attended or cured with outdoor treatment, have taken their treatments or were given treatment at relief camps. It is a matter of common experience that in such man made calamities like communal riots, the persons of medical profession do offer their voluntary free services to the victims of such mass crimes. The pressure at that time is bound to be tremendous. As is common, in this case also, the treatment must be in priority and not obtaining the injury certificate. In

such a situation, the rush to take medical aid is also unprecedented and therefore, it cannot be expected that for every kind of treatment, which may be dressing wound sometimes, sometimes giving pain reliever tablets, sometimes treatment to lessen the swelling and at times only counseling, the injury certificate would be issued. Hence, in all cases, injury certificate may not be available and still treatment must have been taken.

It is, therefore, held that merely non-obtaining and non-producing of injury certificate can never mean that the witness is stating falsehood before the Court. All the injured PW are, therefore found truthful even without injury certificate. Many PW were treated at camp also. This was a common cross-examination for all the injured victims who could not obtain injury certificate.

(2) It can safely be inferred that the victims must have been under tremendous fear while in the hospital also as they were victims of brutal assault and could have survived only because of their luck.

(3) The history before Doctors at General Hospitals of 'burnt by petrol, kerosene etc.' or 'assault by public at Patiya', 'burns by opposite party' cannot be termed to be contradictory or inconsistent with the claim of the victims that they knew some of the miscreants in the mob. Rather it is very natural. It is not proper to expect that the witnesses would give names of the assailants, in spite of the situation prevailing at that time.

(4) From the point of view of the victims, there is no other

interpretation of assault by mob or assault by public than assault by Hindus, in the facts and circumstances of the case.

Considering the facts and circumstances of the case, attack by mob or attack by Hindu mob or by public etc. are satisfactory narration of the happening. The Court is not sitting in Ivory Tower and is fully aware as to even if detailed history of the injury would be given by the victims, what the Doctors would reduce to writing. Doctors would hardly be free at General Hospitals to listen to such history hence writing of the detailed history is just not possible.

(5) In the injury certificates, the kind of the injuries have not been opined. **AIR 2000 SC 2988** - The gist of paragraph 23 of this Judgment indicates that it is open to the Sessions Judge himself to deduce a particular injury to be sufficient in an ordinary course of nature to cause death or not after knowing the facts thereof described by the doctor, which can be done in the interest of justice qua the injured PW. This Court has thought it fit to decide the kind of the injuries sustained by the PW from the fact and circumstances of the case.

All the cases where victims or their relatives have sustained different injuries from simple hurt to grievous hurt have been appreciated in different Part-4 of this Judgement.

2. EXAGGERATIONS :-

Another common submission was related to the witnesses to have given exaggerated version and not to believe them on that count. It is known to the Justice Delivery System that in an anxiety to be believed and sometime for some other purposes,

the witnesses do exaggerate. But then, the job of the Court is also to separate the grain out of the chaff, which putting humbly, this Court has carefully done, by scrutinizing the oral evidences led before the Court.

Witnesses at time, exaggerate out of the fear to be disbelieved. As has been held in the matter of **State of U.P. v. Anil Singh reported in AIR 1988 SC 1998**, the duty of the Court is decided. It is useful to refer paragraph No.15 from the said judgment :

"Para.15. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

In the opinion of this Court, it is highly improper to hold that the exaggerated version cannot be accepted in its entirety and for the embroidery of exaggerations entire version of the witnesses should be discarded. Since it is not in accordance with principles of appreciation of evidence. It is found just and proper to find out the truth from exaggerations, if found any.

This submission is found to be worthless.

3. CONSTITUTION OF SIT AND APPLICATIONS OF VICTIM - PW TO SIT :-

(i) <u>CONSTITUTION OF SIT</u> :-

(a) In this matter, it is matter of record that in the aftermath of Godhra riots, number of Special Leave Petitions were filed before Hon'ble the Supreme Court of India, stating that the investigation is not properly conducted. Considering this, the Hon'ble Supreme Court, by virtue of direction given in the case reported at **(2009) 2 SCC (Cri.) 1055 - National Human Rights Commission v. State of Gujarat** was pleased to decide that notification be issued regarding creation of SIT.

(b) In the said matter, it has been observed that 'the approach of the State is fair and it is not interested in shielding any culprits or guilty persons. But on the other hand, State would like all those who are guilty to be punished.'

(c) Thereafter, there is another judgement which is reported at **(2009) 3 SCC (Cri.) 44 - National Human Rights Commission v. State of Gujarat & Ors.** wherein, it has been specifically observed by their Lordships that "***SIT should conduct further investigation u/s 173(8) of the Cr.P.C.***" In this judgement it has been discussed at length regarding protection being given to the witnesses also.

(d) If these above referred two judgements are perused, it is very much clear that creation of SIT was with a specific view to further investigate as earlier investigation conducted by

respective police stations or prior investigator was not fair and considering the same, SIT was entrusted with this specific work. SIT was created for riot cases of 2002 including three riot cases of Ahmedabad which were earmarked by Hon'ble The Supreme Court, including this case i.e. Naroda Police Station I-C.R.No.100/02 which is more popularly known as Naroda Patiya Case.

(e) Considering the above, it is very much clear that the investigation which was conducted at the initial stage by Naroda Police Station and City Crime Branch Police Station, was improper and that is one of the prime reason for the formation of SIT.

(f) In another reported Judgement at **2010 (suppl.) Cr.L.R. (S.C.) 373 - C.Manippan & Ors. v. State of Tamil Nadu** at paragraph No.50 it has been specifically observed in the facts of the case that "**since earlier investigation was not proper the witnesses have not named any of the accused at an earlier point of time".** There it has been observed that "**merely non-mentioning of the names of the accused at the initial stage may not be fatal"** as the initial investigation in the eyes of Government (in the cited case) was not proper and the said investigation was scraped. Thereafter, it was handed over to other officers, though the Government had ordered to scrap the same.

(g) In the humble opinion of this Court, considering the fact and circumstances of this case to give complete justice, it would be essential for the Court to depend on the reliable part of the investigation by SIT only as upon scrutiny, it is found by

this Court that it is absolutely unjust and imprudent to rely upon the earlier investigation more particularly qua recording of the statements of the PW. It is therefore, to be kept in mind that the above referred principle will also be applicable in this case, taking into consideration that appointment of SIT is based on impropriety of the previous investigation, whether by I.O. No. 1 to any I.O. up to SIT. Even if the names of the accused have not been given by the PW, it cannot be held to be fatal in the facts of the case.

(ii) APPLICATIONS TO SIT BY THE VICTIMS- PWs AT EXH.2289 TO 2316 :-

(a) Vide Exhs.2289 to 2316, applications given by different victims to the SIT is also a common point for cross-examination preferred by the cross-examiner. It is fitting to record in short about these applications. These applications have been given to the SIT by the PWs to request that the SIT should take their complaints or should record their statements etc. While so requesting, some of the PWs have avoided giving details, about the incident, the situation at that time, the acts and omissions of the accused etc., but at the same time, some of them, more particularly in the applications like Exhs.2302, 2304, 2307, 2311, 2313, 2314, 2315, 2293, 2295, 2296 and many more, it has been contended that they are the eyewitnesses of the occurrence, many persons from the mob whom the victims have seen were beating, killing, looting the persons and properties of the Muslims, they have seen the miscreants cutting and killing victims and that though their names were given to the police, the police has removed their names from the complaint, statement etc. Some contended that the police

has not recorded their statements as were spoken by them, some contended that the description of the accused given in the FIR has not at all been written, some contended that their house was burnt in the riot; they have seen the accused burning their houses with their own eyes; their complaints were not written according to their say, they have given complaints naming the accused, but police has not written; they have taken the certified copy of the complaint, hence they have learnt that their complaints have been defectively noted and has not been noted as per their say; and that everything that happened was under the pressure and fear of the police. It is also requested to provide them the atmosphere where they can give their statements without fear, hesitation and which would be written unbiasedly and neutrally. Some contended that there is danger to their lives and property; Muslims were killed and burnt and even dead bodies were also disappeared, the shops, carts, wooden cabins, Masjid were all damaged and destroyed, looted and burnt. Some also contended that the inhabitants of Patiya and the Muslims resided surrounding the area, came to take shelter and rescue at their residences at Hussain Nagar, but while they were in the dwelling houses, the entire house was burnt. Hence for those Muslims who were burnt alive, the contentions about damage, destroying and demolition of the Muslim houses, shops, religious places were though contended by the eye-witnesses, the same has not been noted at all. Moreover, the general contention is that they needed protection. Certain eyewitnesses desired to give their statements to bring truth on record but requested not to include two police officers in the team of SIT as, according to them, they were not neutral and were biased.

(b) Most of the PWs who have given applications to SIT in response to the advertisement by SIT, were cross-examined to the effect that the PW has not given name of the accused which, in fact, has to be appreciated keeping in mind the discussion done herein below. Another area of attack was who wrote the application, in whose handwriting it is written, where it was written etc. It is true that in the application given to the SIT by the PWs, whether collectively or independently, the names of the miscreants, name of the writer etc. are not written. But, those applications are merely formal applications, solely made with a view to request the SIT to take down their statements or about the need of security and/or about expressing their feelings that the further investigation may now not be given to Shri Chudasma or Shri Mysorewala. It is also notable that even the contentions mentioned in the paragraph above, were very much written by some of the said applicants.

(c) It is quite natural that in such applications, there may not be entire statement, as the witness might have understood that to invoke the SIT machinery, such allegations are not required and hence they would have obviously chosen not to contend the allegations against the accused or acts or omissions of the accused or the name of the accused. Even the advertisement given by the SIT does not require such details to be mentioned in these formal application. If this cross is appreciated and is understood, it would result into inability of the witnesses to give such application if he does not know any of the accused, which is not the purpose for constitution of SIT.

(d) There is nothing to be surprised about the fact that the

signatory does not own all the sentences in the application and more particularly, the contention of not to give investigation to Shri Chudasama and Shri Mysorewala because most of the PWs are absolutely illiterate, as has emerged during the testimony of many of the witnesses. They have learnt only to sign and that too after the riot. In these circumstances and also noting the fact that there was too much of uproar among the Muslims about the conduct and approach of Shri K.K. Mysorewala and Shri Chudasama, such a sentence might have been inserted in the application by the educated writers of the applications of the area, during their drafting of the application. Use of these words can be understood to give words to the uproar of the Muslims of the area. Signatory may be knowing the spirit of such sentence and uproar against the previous investigation but he may not be knowing the words used to reflect the anger of Muslims and hence it is really not vital and is not found capable to challenge the credibility of the PW on this count.

(e) Moreover, this application is not statement before police or even an earlier statement. It is the prayer of the witnesses who wanted to give their statements before SIT. Hence, these applications or its contents cannot be given undue importance. Only the gist of this application is to be seen and that is not disowned or disputed by any of the PWs wherein they have stated that they are desirous to give their statements before the SIT. This Court therefore, does not find any substance in the submission qua non-inclusion of name of the accused along with offences committed by them in the application given to SIT. No reasonable doubt is created by part of cross-examination on the aspect. Testing it on probability, the kind of the attitude of the PW is found very natural when after two

years of their formal administrative application, they are confronted on each word of it.

4. PRINTED COMPLAINTS - APPLICATIONS AND LOSS DAMAGE ANALYSIS FORMS :

(a) Many printed complaint applications are on record, some of which were given even C.R. No. As far as the printed applications are concerned, it is nowhere on record as to who was the writer of these complaints - applications and that who has got the same printed, who had collected them and whether it was written after police interrogation or eliciting the information etc. Moreover, as has emerged during the trial, the witnesses were not in their mental framework to reveal everything fearlessly and freely to anyone while these printed complaint in the year, 2002 were handed over. Considering all the said things, it would not be just and proper to use these applications as earlier statements, which were more aiming for the damage analysis or as the prayer in the printed applications if is seen, it is for restitution of the victims. No care has been shown by the Crime Branch even to take down the police complaints of such victim applicants.

(b) The printed applications (though is titled as complaint application in printed words) along with damage analysis form filled in by certain PWs have been addressed to the Police Commissioner of Ahmedabad City.

(c) As emerges from record, the Police Commissioner of Ahmedabad, after having received such complaints –

applications, had sent it all to respective police stations. It is not clear as to where the loss-damage analysis forms were sent or whether it was used by the office of the Collector to calculate the damages or not. Some of such complaints were made part of First C.R. No.100/02 behind the back of the complainants and without the consent or even intimation to the complainants. Moreover, only some of such complaints were merged into I-C.R.No.100/02.

(d) This amounts to haphazardly dealing with the serious complaints of the crime. The Naroda police station has really cut a sorry figure when very serious complaints have been totally ignored. It is to an extent that the complaint which disclosed cognizable offence under Section 302, 201 of IPC etc. was not even treated as the Non Cognizable complaint.

(e) Some of such printed applications / complaints are found tagged with the material of 'C Summary' report, all of which were produced as record of the Court of learned Metropolitan Magistrate, Ahmedabad.

(f) It has not been elicited from the PW as to who got these forms printed and who filled in the blanks. Some said somebody like police was filling. Most of them did not know who filled up the form for them. What is too common in the applications was, all the forms seem to be mainly aimed to secure compensation for the riot victims.

(g) The applications addressed to the Police Commissioner, Ahmedabad, seem to have been sent to the Naroda Police

Station by the office of the Commissioner. Instead of going to the Camp to take down the detailed compliant from the victim, as is defined under Section 2(d) of Cr.P.C., a short cut of merging it with I-C.R.No.100/02, has been chosen which was also without consent or statement of the applicant. After merger no investigation was carried out. As has been discussed later, the fill in the gaps does not seems to have been done by Police in the printed complaint applications.

(h) For some of the applications, even merger was also not done. What a halfhearted or say heartless dealing by the Naroda Police Station of serious complaint of Muslim riot victims ?

(i) Overall, the prosecution witnesses, barring hardly 3 to 4, were found to be natural and having their residence at the site of the offence. It was observed from their over all approach that they have no reason to falsely involve any accused and have no enmity against any of the accused.

It has been borne in mind that this case has Godhra massacre in its background where helpless Karsevaks were done to death. In this case, thousands of persons with deadly weapons have attacked on helpless, weaponless people, with intentions, preplanning and while sharing common objects they had. The Muslim inhabitant were doing different labour work for their living and they have lost even their last penny in the incident. The incident was horrifying for them as tremendous and unforgettable loss of property and human

lives have been suffered by them.

(j) Moreover, in the case, very frequently the investigating agency had kept on been changing. The entire offence is found to be a result of systematic campaign and a result of pre-planned criminal conspiracy by the kingpin and leaders of the entire conspiracy.

(k) It is true that it is a settled position of law which is also getting strength from the citations produced by both the sides that the defects or lacunae in the investigation are no ground for acquittal. In this case, initial investigation has been found to be very dis-satisfactory and unreliable which can be seen from the way in which these printed applications have been dealt with. Hence the said investigation cannot be held to be dependable. The faulty investigation, the defects or lacunae in the investigation, should not always grant benefit to the accused but, the accused are entitled to benefit of doubt only in the condition when the defect or lacuna in the investigation prejudices the accused in any manner.

(l) PW 115 has stated at paragraph 42 that at the printed complaint-application at Exh.749 admitted to have been signed by the PW, out of the four names of the accused, two names of the accused viz. of A-26 and Bhavani were not stated by him. This illustration shows that the record of the printed application is also such a record which, though ought to have been verified by the previous investigators before giving it I-C.R.No., but the same has not been done. This Court is of the opinion that just

because such applications have been given C.R.No., it does not become the earlier statement of the victim or complaint of the victim as is understood by Cr.P.C. Treating it as complaint in absence of formality by the police, it may prejudice the interest of either of the parties as the case may be.

In paragraph 42 itself, the witness has stated that since SIT had verified and read the same, the witness could say that the two names were not given by him. In nutshell, the interest of justice would have been better served if such complaint received during the previous investigation should have been dealt with a little more care. It is true that in all such complaints such situation might not be existing, but even one such illustration is sufficient not to completely rely upon, such complaints where mechanically Crime Register number were given by the previous investigator. This can be treated as a complaint of the P.W. to an extent, the contents of it are admitted to be true by him.

A separate chapter is assigned to `previous investigation' but here it is discussed to adjudge the merits of the submission on the printed complaint application.

(m) As is clear from the printed applications and the oral evidence of PW, the object of the mobs was to show criminal force and if necessary by actual use of force to commit different offences, to damage, destroy and rob properties of Muslims, to kill Muslims, to score them of, to revenge the killing of Hindu Kar Sevaks at Godhra. The

object of gathering with weapons was undoubtedly to attack Muslims, if chance was available.

(n) In comparison with oral evidence of the witnesses before the Court, nothing else can be placed in the facts and circumstances of this case. Moreover, the printed complaints have not been written by the police and that the same therefore, cannot be termed to be the earlier statements of the PWs recorded during investigation in any case. As has already been discussed, some such printed complaints - applications have been found with the C-Summary reports. The previous investigator has given very little value to the complaint-applications or the complaints. Suffice it to say that the version given by the witness before the Court shall be given importance and that the omissions or contradictions can only be seen from the statement before the SIT, for that part of the statement which was neither written mechanically nor uniformly written, without the say of the PW. Contents of the printed application shall not be used to doubt credibility of the PW.

5. INABILITY TO DESCRIBE TOPOGRAPHY :-

Almost every PW was confronted on the topography of the site by the cross-examiner. It is true that at times some PWs were confused in explaining the sites of some of the places. The defence submits that since the PWs were found to be not conversant with the area, it has to be believed that they are indeed not inhabitants of this Muslim Chawls. This submission cannot be held to be acceptable in the facts of the case.

(5-A) **Defence citation at Sr.No.57** has been relied upon to submit that, when the topography of the place of the incident indicates that the witness could not have seen the incident, the accused is entitled to benefit of doubt.

This Court is of the opinion that in the instant case, no such fact is emerging on record and secondly, the trial has been initiated after about seven years of the occurrence by which time the site has seen innumerable changes. Hence, it is not possible to hold that, it was improbable for the witness to have seen the occurrence on that day because, whatever material is on record does not reveal the clear and unambiguous position about the site on that day. Moreover, the site is extremely vast having more than fifteen Muslim chawls and than come the Hindu societies. This is most rare factor of the fact of the case. The case being different on the fact from the cited judgement, the cited judgement has no application.

(5-B) With reference It sounds fitting to record the following facts :

(a) It has to be accepted as a hard reality of life that everyone may not be able to describe the topography though the very same person may physically go exactly to that place. Hence, the cross-examination of different witnesses to exhibit their poor knowledge of topography and thereby pointing out the improbability of their version of residing at the site, is a point which does not find any favour with this Court.

(b) It is notable here that after the communal riot of 2002, many of the PWs never returned to the Muslim chawls where

they were residing for years together and where they had their roots. The Muslims have rather chosen to go to the new houses provided to them, leaving this area where many of them resided for decades together.

(c) The incident has taken place in the year 2002, the trial started in the year 2009 and the visit of the Court to the site was in the year 2012. As is clear from the cross-examination and as can be safely inferred, there must be and there has to be notable changes in the site within 10 years. The prosecuting agency has put up on record video cassette prepared and even panchnama which was drawn during the previous investigation. But, upon appreciation of overall facts and circumstances of the case, since the previous investigation has been found faulty and since the previous record of recordance of the statement is found doubtful, no implicit reliance can be placed on it. There is no doubt about the fact that as the V.C.D. exhibits the Muslim chawls practically became human less, burnt, black coloured horrifying site.

(d) An attempt though has been made to falsify the witnesses on the aspect of topography, but their evidence on the point of topography is not of much significance because whatever they are testifying is stated as rough estimates and as against that there is definite evidence of official witnesses who were from the office of D.I.L.R., who have prepared map of the site of the offence right in the year 2002 basing upon the panchnama of the site of the offence and then lastly the Court has also visited the site of the offence to get the general idea about the situation at the site.

For the sake of convenience, it sounds proper to put in a tabular form, the glimpses of the site visit of the Court, the Maps prepared for the site visit at Chapter-2 of this Part and the VCD of the year 2002 prepared by Investigating Officer No.2.

In short inability to describe the site in words is not held as hurdle to the credibility of the P.W. as no reason is found out to disbelieve the version of sufferers of the crime.

6. SOME HINDUS SAVED LIVES OF MUSLIMS :

(1) Some of the PWs were confronted on the aspect that in fact some of the Hindus of the locality have helped the Muslims. This is to submit that for the said reason, the Hindus of the locality cannot be culprits.

This Court is of the opinion that it is true that the approach of certain Hindus, who have tried to save victims, kept them at their home, gave water to the victims, gave food to them etc. have been elicited from the PWs but then, these are acts of individuals, and that does not provide any defence to the accused even though they are residing in the same locality. All Hindus are not perpetrators of crime. In the same way, all Muslims are not victims of this crime. Everyone cannot be same.

(2) It is highlighted that accused like A-36 has, in fact, saved some 30 to 40 Muslims. But in the opinion of this Court, merely such illustration are not proof of innocence of all accused. In fact, keeping weapon in the hand on that day of

communal riot and coming from their homes to the Muslim chawls itself is eloquent unless some satisfactory explanation or circumstance comes on record which justifies possession of the weapon, that too a deadly weapon. Secondly, if some Muslim is attached with some Hindu on personal level, than that Hindu may be interested in saving life of that Muslim friend, but that is absolutely on personal level. The acts and omissions of the accused while as conspirator or as member of unlawful assembly is to be decided and that his acts or omissions for personal relationship are not being scanned; his acts on that day as a member of the unlawful assembly or as conspirator is under scrutiny. No doubt, if accused like Accused - 36 shows from conduct that after initially joining the unlawful assembly, he has either changed his mind or has discontinued membership of the unlawful assembly then such accused deserved different treatment while appreciation as in such case, he then did not share the common objects of the unlawful assembly after joining the assembly and by his conduct he proves to have discontinued his membership of that assembly.

In normal life or when one comes out of the house or goes at the site merely as an onlooker, one would not go with any weapon, hence it is not normal conduct. It is therefore kept in mind that presence at the site with weapon itself needs to be viewed seriously.

In such case when the accused has not offered any satisfactory explanation in any manner, the only inference which can be drawn is that the said accused has also participated in the crime and normally he has possessed the weapon to use it since he was either party to the conspiracy or

he was member of unlawful assembly.

Good act of some of the Hindus can never be the defence of the Hindu perpetrators of crime.

7. NUMBER OF OMISSIONS & CONTRADICTIONS :

(1) It is settled position of law that the Omissions, unless are material, should not be given unnecessary importance. In the same way, the contradictions, unless is of such a magnitude that it materially affects the entire prosecution case, should not be given importance. Otherwise it needs to be borne in mind that it is very unnatural to expect a witness to speak with mathematical niceties. Hence the contradictions and omissions should not be given undue importance.

(2) It cannot be perceived that the Injured will spare real assailant and will falsely implicate the innocents. The injured eyewitnesses needs to be accordingly appreciated.

(3) In temptation to create more numbers of omissions, the defence kept on adding what in law can never be termed to be omission. It is known to everyone that if, during investigation, second statement is taken only for some explanation or clarification or to clear some ambiguity arose in the first statement, then it is not necessary for the PW to repeat the contents of the first statement again in the second statement. Hence such omissions for the sake of name, suggested from such second statements of the PW have not been treated as omissions which are in fact not omissions at

all. In fact, such part of the cross examination has made the cross-examination more grueling.

(4) It is a settled position of law that unless the witness contradicts his previous version, it cannot be said to be contradiction at all. To label any contradiction as material contradiction, it must be changing the very heart of the case, otherwise it cannot be termed to be material contradiction. Every difference in the previous statement and the testimony before the Court is not contradiction. Hence the difference of use of words in the testimony before the Court but maintaining the similar spirit is not contradiction. It is rather suggesting that the witness speaks naturally. Unless one crams his statement before the police, he cannot reproduce in the similar words in his testimony before the Court. The witnesses in this case, are found to be very natural, barring some exceptions. Material contradictions with the statement recorded by SIT are rarity.

(4-a) The judgement cited by **learned Public Prosecutor at Sr.No.1** is clearly applicable and goes with this discussion.

> **Head Note reads as, "*Evidence Act (1 of 1872), S-3 - Oral Evidence - Appreciation - Deficiencies, drawbacks and infirmities in evidence - Need to be evaluated to find out whether they go against general tenor of evidence - Rendering evidence unworthy of belief.***

(4-b) The judgement cited at **Sr.No.14 by the learned Public Prosecutor** is also on the same principle.

(4-c) As has been held in the cited judgement at **Sr.No.3**, it is very difficult to predict or express any opinion as to what could have been normal or natural conduct of a person in such a situation that response of individuals in any situation may differ from person to person. In such circumstances, one may not muster courage to jump into prey and risk his own life.

(5) Whether a particular fact was stated by the witness or not to the police is not per se relevant. This is relevant only for contradicting the version of the witness as given by him in the Court. It is contradiction when the witness changes from negative version before the police to positive version before the Court for the same fact and it is not for every word here or there, if the spirit remains the same. In an anxiety to show more numbers of contradiction all such questions, which can not be termed to be contradiction, have been asked, which is held to be of no value.

(6) The material contradiction is, when the witness states exactly opposite version, exactly contradictory version only then it is contradiction. All what has not been stated cannot be presumed to have been stated when something else which has not been stated before the police has been recorded by police.

(7) Many submissions have been made by the learned advocates for the defence that there is serious contradictions between one prosecution witness and another prosecution witness. But it needs a note that use of Section 145 Indian Evidence Act is permissible when the very same PW makes two

contradictory versions. The Court cannot draw adverse inference when it is prayed that the alleged contradiction between one prosecution witness and another prosecution witness exists and when it is submitted that for this reason both the PW should not be believed. This is what has been submitted by the defence here.

(8) The submission on the aspect of contradiction exists between the testimony before the Court and the affidavit before Hon'ble the Supreme Court of India. It is submitted by the defence that this impeached the credit of the witness hence the credibility of the witness is under effective challenge.

As is known to all concerned that the SIT has recorded more than one statement when it was so required. After noting down the principal statement the SIT has recorded the clarificatory statement of the witness for a limited purpose of clarification, explanation, only to explain affidavit before the Supreme Court, only for some press report, only for a limited application etc. In the second statement onwards the statement would be obviously written only for a limited purpose. Hence all those told in the main statement would not be repeated as in any case, it is a meaningless exercise.

(9) This Court is not ready to believe that this procedure is not known to learned Advocates for defence, but still however, every witness as well as the Investigating Officer were asked questions even on such lack of useless repetitions, which may be certainly to show a long list of omissions or for any other reason which is common for such cases.

(10) This Court has considered the SIT investigation reliable except for the mechanical uniform sentence and lacking collecting detailed material on certain aspects. But each contradiction and material from the deposition of the PW, highlighted by the defence cannot be given similar weightage. Unless the prosecution case is materially contradicted by the PW between the statement of the SIT and the deposition before the Court the same has not been given weightage by the Court in light of the facts before this case. In the same way, only material omission, which omission changes the meaning of the sentence and which can be termed to be on material fact of the statement, shall only be given weightage. It is observed in the testimony of PW 327, (the only Investigating Officer of SIT wherein the defence has questioned on every contradiction and omission of the respective PW which the defence wish to rely upon) that the defence is expecting verbatim similarity between the statement before SIT and testimony before the Court. This is just like walking in fairyland. It is neither natural nor practically probable that the witness would speak in the same words and would not use other words even when the spirit of it is similar. In fact if the witness does as is expected here by the defence, the said witness has to be labeled as parrot like witness and his credibility normally comes under the shadow of doubt because to have photogenic memory is rare. In this case, surprisingly the defence has questioned on all such omissions and contradictions which, in law are not known as contradiction or omission at all. Be that as it may be. This is only to clarify that such omissions and clarifications have not been held to be material, significant, relevant and able to put up altogether a contradictory version of the witness.

(11) The peculiar fact of this case cannot go out of site that in case of previous investigation the witness has spoken before about 6 to 8 long years and even in case of SIT, before he comes to the Court he spoke before about 2 years. This Court is aware that in day-to-day life everyday one learns something or other. The communication skill keeps on becoming more and more sharper. Men learns from the experiences they have gained in their life. In this case the witnesses had misfortune of repeating their sorbid tale to different police officers, different higher police officers, press, media, VIPs, inter se among witnesses, before family members, neighbours, doctors, social workers, NGOs and so on and so forth and lastly before the Court. Hence even within 2 years, the witness may be in a position to put up his submission in more effective and refined manner. Hence all such attempts on the part of witness cannot be used to labeled him as a liar. The possibility is even that, within 2 years the priority changes so much that the witness forgets the depth of his statement before the SIT even though it is true. Most of the witnesses were cut off from Naroda Patiya after the occurrence. Hence they would obviously not be now interested in the affairs as they were interested once upon a time. Time consoles everyone.

To appreciate the witness correctly the reference to context, the spirit of the words he has used, his background, his knowledge on the language, his fluency are all have to be considered and this Court did that.

(12) This Court shall practice the theory that while assessing the truth or otherwise of the versions advanced before the Court by any of the victim or relative of victim or

deceased victims, the fact that earlier a contradictory statement was made or that something important was not stated earlier viz. the material omission shall not be lost sight of by the Court, only if the reference is to the SIT statement.

This Court has opined that the earlier investigation, for various reasons, does not inspire confidence of the Court as the same is not found fully reliable.

(13) Any contradictory version with the version recorded in the previous investigation, should not be excluded from the consideration of the Court as the said investigation is not absolutely reliable.

(14) **Learned advocate for defence** has submitted citation at **Sr.No.49** and citation at **Sr.No.51** to submit that in case of contradictions the accused are entitled to acquittal.

In the opinion of this Court, principally both the citations spell the settled position of law but then, the facts of those cited cases were such wherein Hon'ble The High Court was pleased to hold that the contradictions in the evidence of the eyewitness were major and that is one of the cause to grant the benefit of doubt.

In the case on the hand, wherever this Court has found the contradictions to be major and material, the said part of the evidence has not been concluded in the consideration. What is to be stated is what is principally right cannot be applied in every case as a straight jacket formula unless the fact is decided by the Court. In nutshell, the facts being

different, the judgements have no application in the case on hand. The principle in the Judgement has been born in mind while appreciating the PW.

(15) PW 204 is a man having education hardly upto 2nd standard and he admits that he does not know reasonable good Gujarati or reasonable good Hindi. At para-33, the witness specified about the uniform sentence of the SIT statement that the two previous statements, whether are of his or not, was not understood by him. Some papers were read before him, before writing statement, but he had not understood anything. This illustration shows that the uniform sentence has no meaning when the witness do not understand anything. Such uniform sentences saying all in the statements recorded by the previous investigators is true and correct, are formal in its nature, hence, without bothering much, such sentences are written in its usual course. Moreover, the alleged statement of the witnesses are of the year 2002, wherein there is bound to be mixture of genuine version of the witness and the desire of previous investigator 'to focus some accused and to defocus another'.

(16) Omission & Contradiction of Statement of 2002 :

(16.1) At the cost of repetition, it is mentioned that in light of the discussion on previous investigation the grievances of the witnesses appear to be genuine when they are saying that even though they have informed the writer of the statement, the writers did not include it in the statement. The statement of these witnesses were also taken by SIT where they told the truth, but unfortunately for the fault of previous investigators it

looks on record that there is lot of omission and contradiction in the statement of the witnesses while comparing it with statement of 2002 which is not truth.

(16.2) Citation for contradiction :

(a) In the cited case at **Sr.No.51** the contradiction in the testimony of claimant entitled the accused to acquittal but, in the instant case, there are no contradictions on record which can be of the caliber to contradict the prosecution case.

(b) Moreover, the case on hand is the case of communal riot whereas, the cited case was not of communal riot. The question has been discussed at great length as to what could be the hazard and handicap of the victims to spell the name of the accused and that being a very peculiar circumstance of the case of the hand, even this case has no application.

(17) Credibility vis-a-vis Previous Investigation qua omission etc:

This Court believes that for the unreliable and condemnable investigation, no fault can be found out with the witnesses, who have already been harassed moving pillar to post viz. Naroda Police Station to Crime Branch as deposed by some of the PWs. It is therefore, held that from any of the statement recorded prior to the SIT, no contradiction and omission is worthy to be believed as the statements are not faithful record of the investigation and at times, the versions of the witnesses have kept vague and void which is clearly to fill in the blanks later, to avoid doing investigation in specific

direction. In many of the statements the amount of the damages is kept blank, no amount is filled in.

Normally, the earlier statements are used for contradicting the witnesses, but in the instant case the interest of the justice can only be served if, the contradiction and omissions with the statement of the SIT is only considered as all the previous investigation is not faithful record, is not dependable and has become suspect. Hence, all the statements of the previous investigation loses its value and that no contradiction or omission based on the previous statement has been taken into consideration to decide the credibility or veracity of any of the prosecuting witnesses.

8. ORIGIN OF THE OCCURRENCE ACCORDING TO DEFENCE :-

(1) L.A. Mr.Kikani for the defence has submitted that the incident ought not to have occurred at all, but it has occurred only on account of mischief played by PW 200 Shri Shaukat Nabi Mansuri who has driven one Tata 407 - GQD 4135 on the date of the occurrence wherein he has killed one Hindu and has injured two Hindus. According to the defence this is the cause in addition to the murder of Ranjit Singh because of which the persons assembled as onlookers were annoyed and then the violence spread. It is submitted that right in the morning, PW-200 intentionally did this act which has provoked the mob and as a result the incident took place.

(2) Upon perusal of the record, it becomes clear that Exh.1796 is the complaint filed against PW-200 for rash and

negligent driving. The important aspect of the entire complaint is that, that according to the complaint, the driving of Tata 407 took place at about 12:30 p.m. hence it is not possible for the incident to take place because of the driving of Tata 407 as it has been proved beyond reasonable doubt that the initiation of different incidents was maximum from about 09:00 or 09:30 a.m. to 11.00 a.m.

(3) Secondly, if paragraph 11 of PW-274 is perused, according to Shri K.K.Mysorewala, the rash and careless driving was done at about 11:30 a.m., near Nurani Masjid. The driver had rashly driven the vehicle; the speed was rough and he took out the vehicle on the road passing from the mobs of Hindus. At this time, Shri K.K.Mysorewala chased the vehicle and while the vehicle was being chased, and while the vehicle was going from Naroda Bethak and then towards Galaxy Cinema, the PW-274 could stop the vehicle. On the way (not at the Nurani or not near Nurani), the Tata 407 dashed with three of the persons out of whom, one died on the spot and two were injured. It is not logical that when the death and two injuries to Hindus have taken place on the way to Naroda Bethak to Galaxy, which is quite far from Nurani Masjid, the disturbance at Nurani Masjid could erupt because of this driving.

Moreover how the mob at Nurani learnt that the driver of the vehicle was Muslim and one Hindu died and two were hurt in the accident. It is case of none that the accident was not genuine and was creation of PW-200 to kill Hindus. One more question is that, that how PW-200 would know that he was dashing with Hindus. Therefore, the stand of the defence is most improbable and unbelievable one as it may be noted that

it is not admitted by PW-200 that he was driving Tata 407 and he puts up a different case.

(4) In para-13, PW-274 states that since the members of the mob assembled at Nurani have learnt that the driver had taken toll of three Hindus, the mob was provoked. But firstly according to PW-274, he was chasing the driver then according to him, he stopped the vehicle then he took the driver and the vehicle to Naroda Police Station. He then instructed the police officials at Police Station to file a complaint against the driver and then he returned to Nurani. If this sequence is true, then how he can speak from his personal knowledge as to how the message was spread and whether it was spread or not and when the message was spread amongst the members of the mob at Nurani.

Moreover, until the driver was caught and taken to Police Station, how the members of the Hindu mob would learn that the driver was a Muslim and that he killed one Hindu and injured two Hindus in the accident.

(5) It is further submitted by defence through suggestions to the PW and even while arguing that the communal riots on that day started as a reaction, retaliation and to settle the score with the Muslims for the Godhra carnage and therefore, there is nothing surprising if a preplanned method of burning is adopted for killing Muslims to see that the evidence of killing should not be available or to give “Tit for Tat”. After Godhra Carnage enough time of about 24 hours was available to rioters. Hence preparation, pre-concert, premeditation is most probable which, in the fact and circumstances, was actually

done by the accused.

(6) Putting all these things together also, no substance is found in the defence version as far as the reason advanced for spread of the violence on that day. The supporting opinion provided by PW-274 in favour of the defence that the mob was more excited because of this incident provides additional support to point out the state of mind of Shri K.K. Mysorewala.

(7) From the foregoing discussions, when the previous investigation is held to have been not forming correct record, the testimonies of the prosecution witnesses are not shaken in any manner, by any contradictions or omissions emerging from the previous record. The previous investigation is not dependable and reliable one. Though the contention about mala fide conduct of the Investigating Officer is not put forward on behalf of the State, but it was not maintaining faithful record is an apparent sure fact. It may be to an extent dishonest when the witnesses were giving the names of miscreants whose name the police did not wish to write down in the statement (like A-37 etc) the police was avoiding to write that part or was shaping the statements with aim the result of non-involvement of certain accused.

(8) While concluding, it is opined that the origin of the occurrence is not accepted to be what is submitted by the defence.

9. INJURY OF FIREARMS, POLICE FIRING AND PRIVATE FIRING :-

(1) It is true that no evidence to the kind of the bullet used, the kind of the fire arms the accused were holding, whether the victims died of private firing or police firing have been collected by the then investigating agency. To establish the case of private firing having been done by some of the accused, it is necessary to prove the injury caused or the death caused, was on account of use of particular fire arm, the possibility and probability of the said injury by use of such fire arm and even remains of the bullets or the gun powder on the hands of the accused, the bullet if it has hit the victim to be found out from his body and if that has passed through the body then the said bullet also needs to be found out and collected by the investigating agency. But no such exercise has been undertaken by the investigating agency, particularly I.O.-1. Moreover, the police witnesses have stated that they had to do firing in air and the actual firing to maintain the law and order situation and the police did firing under the orders given to them and that even some of the PWs support the fact of police firing and even the some of the injured witnesses have also stated about their injury to have been caused in the police firing whereas some stated that the police did fire on that day.

(2) It therefore, proves beyond reasonable doubt that there was a police firing which even stands proved by the testimonies of police PW. PW-294 D.C.P. states of only one death in police firing, but according to the eyewitnesses, death and injuries in firing are many. Eyewitnesses have been testified about possession and use of firearm by A-2, A-20, A-41 and A-44 etc. In the facts and circumstances of the case, it can safely be inferred that the accused had the firearm on that day which in the fact of the case in every probability, they must have used it

to terrorize the Muslims.

In fact private firing by these accused is also alleged by the PW. Private firing by the named accused is deposed by PW-52 and others (details are given at Part-7) which stands probablise viewing, on listening and perusing contents of Sting Operation. Details of it has been discussed in the Chapter of Sting Operation. Suffice it to opine here that the firearms were in fact possessed by the named accused and it was also used even to burst the gas cylinder to destroy the entire chawls and houses of Muslim in addition to use it at site. Hence the case of private firing is held to be probable and that role of A-2, A-20, A-41 and A-44 etc. qua the allegation of having possessed and used firearm and having killed and injured the victims by use of firearm on that day needs to be believed. When no scientific evidence have been deliberately collected by the Police, there are more reasons to believe the oral evidence upon proper scrutiny. Only certain accused are involved in the private firing. In the sting operation also the use of it has been confessed which, if taken in aid after establishment of the prosecution case, testimonies of PW, does prove the case of private firing by the accused. Testimonies of PW-52, 136, 104, etc. prove the case of private firing on that day.

(3) It has to be put on record that I.O. No.-1 Shri Mysorewala has conducted himself in most surprising and shocking manner on that day. He was not neutral.

10. PROBABILITY :-

(1) The general defence strategy was to attack the aspect of

probability and possibility of the incidents narrated by PW and to challenge the veracity of the witnesses.

(2) This Court has carefully examined these aspects and where the incidents narrated by the witness were not found to be probable, the same have not been considered by this court while appreciating the evidence. Moreover, the possibility of the incident has also been examined and wherever the veracity of the witness has been effectively challenged and wherever the witnesses have been proved to advancing only falsehood and not even mixture of falsehood and truth, then such oral evidence has even been discarded by this court.

(3) While deciding the credibility, it is to be remembered that the P.W. normally testifies on their perception of the incident witnessed. As has been held in the judgement cited at **Sr.No.20** of the list of learned P.P., at Head Note-D ***"Reaction of eyewitnesses - different witnesses, held, react differently - there cannot be any set pattern of or a rule of human reaction also needs to be kept in mind."***

(4) The probability of any incident can only be decided in the background of facts and circumstances of each case. There cannot be uniform reaction of everyone to every situation. One may fight and another may face fright also.

(5) Most of the occurrences testified by the victims are found by this Court to be most probable.

11. LENGTHY & TIRING CROSS, RUSTIC WITNESS AND KIND OF THE WITNESSES IN THE CASE :-

(1) When rustic or villager witnesses are subjected to fatiguing and tiring cross-examination by the cross-examiner, it needs to be remembered that since the witnesses are not habitual to concentrate for so long, they may commit some errors or when the questions are poised in a way because of which the witnesses could be misguided, there may be contradictions in such cross-examination. But, merely that is not sufficient to discard the evidence of the witnesses.

(2) Certain rustic witnesses may not have sense of directions, sense of time and they may not be able to reproduce the details of the events very exactly. Their expression power is generally poor. Victim and their relative PWs of this case are not belonging to Gujarat, they are mostly from Karnataka, from Maharashtra, from U.P. and Rajasthan. Hence they do not know Gujarati, they are mostly illiterate or very less educated as good as without formal education. Hence inability to express properly is common but it does not discredit the witness who is otherwise reliable.

(3) Most of the PWs have been extensively cross- examined by many defence lawyers. Overall the cross-examination was very tiring and fatiguing and that such cross-examination coupled with many irrelevant questions, has to be read, keeping in mind the caliber of the PW to perceive the question, to reproduce the incidents from the memory that too as perceived by them but, as questioned by the cross examiner.

(4) The lengthy cross-examination of many witnesses running into pages does not yield any fruit in favour of the defence. In

case of many of the victim PWs or relative of the deceased, even if they have named only deceased accused, they were cross examined at length. In a case the PW have identified the accused, then they had to face very tiring, grueling and fatiguing cross-examination, which continued for three days in cases of many PW.

(5) This Court has adopted a working method for this trial to give complete liberty to the defence, but at the same time, strictly and sincerely taking care of feeling of the PW, protect them against annoying, insulting or embarrassing questions by the cross examiner. Because of this method the Court has disallowed hardly one or two question in the entire trial where 327 P.W. have been examined. This aspect deserves appropriate care while appreciating the evidence which has been recorded.

(6) The **citation No.1 of learned Public Prosecutor** and more particularly Head Note - C, D & F of the judgement are worth quoting in support of the discussion.

Head Note-C

Evidence Act (1 of 1872), S-3 - Oral Evidence - Discrepancies - Normally exists - They are due to errors of observation, mental disposition, shock and horror at time of incident - Unless they go to root of matter - Such discrepancies do not make evidence unreliable.

Head Note - D

"A rustic witness, who is subjected to fatiguing, taxing and tiring cross-examination for days together, is

bound to get confused and make some inconsistent statements. Some discrepancies are bound to take place if a witness is cross-examined at length for days together. Therefore, the discrepancies noticed in the evidence of a rustic witness who is subjected to grueling cross-examination should not be blown out of proportion, to do so is to ignore hard realities of village life and give undeserved benefit to the accused who have perpetrated heinous crime. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative. Therefore, the Court must keep in mind all these relevant factors while appreciating evidence of a rustic witness."

Head Note - F

Evidence Act (1 of 1872) S,3 - Rustic eye-witness - Cross-examination - For days together to confuse him - Practice deprecated.

The above observations are squarely applicable in the facts of the cases.

(6) Most of the victim witnesses of this case are illiterate, or too less literate to be called literate. Some of the witnesses

have learnt only to sign, that too after the riot. In a way, they are concentrating on their livelihood and family more than anything else.

The language problem of the witnesses was observed by this court in case of many witnesses for which reason, in the cross examination at times they have given reply even without understanding the question in detail. The Court could observe their limitations of understanding more particularly Gujarati and even Hindi language.

PW-184 at para 34 gives such illustration in Gujarati and even in Hindi "Pani No Nal" and "Pani Ni Chakli" in a way conveys the meaning of water tap. The existence of water tap near ST Workshop or at the entry of the Chawl was confronted to many witnesses whosoever has referred the water tap as a place from where they have seen the incident. Many witnesses have stated about existence of such water taps and PW-188 states that there were four water taps near S.T.Workshop and two water taps at the Pandit-Ni Chawl. Thus, there is no doubt that there were water taps near S.T. as well as at the entry of Chawl. PW-184 states that there was water tap on the road, but there was no water cock which is also in fact used for water tap only in Gujarati language. This shows the witnesses were at times confused for the synonymous words used.

12. NOT LODGING COMPLAINT :-

(1) The suggestions that some PW like PW-52 have though gone out of State, out of country she did not file any complaint even there.

(2) In the opinion of this Court, this is not only irrelevant but even is not a suggestion based on reality of life or the common conduct of any victim. When one is bothered for one's security, safety of life and family, one would not give priority to lodge complaint. More particularly, as many of the PW have expressed that they suffered because the police was inactive, was siding Hindus etc. Though such allegations may not be complete true or may be misconception also, the fact to be noted is no victim would incline to file complaint in such biased and non-conducive situation. Moreover, the victims like PW-52, PW-116 and others who have migrated because of the occurance would never return to file complaint or would not file complaint at outside for loss of interest. In fact had there not been SIT, these PWs would have never come to Patiya and the truth with them would have never unearthed. It is quite astonishing that no investigating agency has thought it fit to know as to where such victims and eye-witnesses have gone, and what is their say about the occurrence.

13. POPULATION OF MUSLIM AT NARODA AND THE PROBABILITY :-

(1) This discussion is with reference to Exh.2015, the affidavit of PW-294 before Hon'ble Justice Nanavaty and Shah Commission. This document is used by the cross examiner which, as provided in S.6 of Commissions of Enquiry Act, 1952, cannot be used against the PW. But since the document is relied upon and referred by the cross examiner, this Court has perused the same.

(2) On internal page 3 of Exh.2015, it is stated by PW-294 that the population of the Naroda Police Station area is of 4,50,000 persons and the population of Muslims in the area is 20,000 which was spread at Naroda Patiya, near and behind Nurani Masjid in different chawls, Hussain Nagar and its chawls which is opposite Nurani Masjid and at Naroda Gaam. The Muslim locality is surrounded by Hindu locality.

(3) In the opinion of this Court, the above noted information clarifies that the Muslim population in the area is only about 4.44% of the total population of the area. All of them were not residing at Naroda Patiya. Hence it is clear that the Muslims were admittedly in minority and that minority was surrounded by Hindus viz. majority, hence defence of free fight vigorously advanced by the defence cannot be believed as is not found logical. Secondly, who can attack ? One who is surrounded or one who has surrounded? The obvious reply is, in any case, the Hindus must have attacked Muslims. as it is most probable.

(4) One or two Muslim youth, if had tried to resist the stone-pelting as response to the stone pelting done by huge mobs on masjid and on Muslims, it cannot be called stone-pelting was initiated by Muslims. It can, at the most be said to have been done in self defence.

(5) It is also noteworthy that except the religious place and dwelling houses and business places of Muslims, no other attacks have been reported in the entire area. The discussion confirms that the defence of free fight between the two community is absolutely baseless and not probable. Considering the population of Muslims in the area, the

probability of attack on Muslims by Hindus is the only logical probability seeing it in the background of Godhra Carnage.

14. AFFIDAVIT BEFORE THE HON'BLE SUPREME COURT OF INDIA :-

(1) The affidavits filed in the Hon'ble Supreme Court is also another point of cross-examination and arguments. Firstly, it has not been proved that whether this affidavit was produced in the Supreme Court or not. The most important aspect is, it is not elicited from the I.O. as to whether these affidavits were really filed at Hon'ble the Apex Court or not. No certified copy has been secured from Hon'ble the Apex Court. When defence wants to rely upon it, it should highlight reasonable probability of its filing, if not proof. No investigation was carried out admittedly on that and secondly the purpose for filing such affidavit is different from the purpose of giving the testimony and even giving statement before SIT. Hence, two unequals cannot be compared.

(2) Even if it is accepted that such affidavits were in fact filed then also the reason for which the affidavits were filed before Hon'ble the Supreme Court of India that too, in a transfer petition, is absolutely different than giving statement before the Investigating Officer. Hence it cannot be treated as earlier statement of the PW in the sense that it is not the same thing. In the humble opinion of this Court these affidavits cannot be used to challenge credibility of the witnesses as submitted.

(3) It is possible that after six years, when the PW gave statement for the first time in free and fearless atmosphere

after getting the security which the PW did not have during previous investigation, the PW could muster courage to state many more true facts. But at times, after coming home from the SIT, one remembers many other things which one has missed while telling it to the SIT. It can happen that the witness would like to tell those left out things in his testimony. Hence, if something was not told to the SIT and if told only to the Court, then, in such case, it is not proper to believe that the witness is speaking lie only on that count. It is different that the deadline has to be drawn somewhere. In the facts and circumstances of this case, what is not told before SIT and if it is material contradiction or omission in the eyes of the Court then that part has been kept out of consideration as interest of fair trial demands that. Except the uniform, mechanical sentence and such other aspects and such other parts which has not inspired the confidence of the Court even in the investigation of SIT by and large the investigation of SIT is the base of the case.

(4) Even if it is accepted that these affidavits were filed, then it was obviously to support the transfer petition and not to prove or investigate the prosecution case, therefore also, the purpose being different, this cannot be held to be earlier statement made during the investigation.

(5) Who drafts the affidavits, for what, when, who translated the contents of instruction of the P.W. are also all the issues needs to be answered before giving importance to this part of the cross but no such material is on record. It is therefore just and proper not to blow it out of proportion.

15. DELAY IN F.I.R., COMPLAINT AND STATEMENTS,

ISSUE OF COMPLAINT ANTE-DATED AND ANTE-TIMED.

(a) Noting the fact that the entire day was very tense and further the disturbances were continued, the priority of the police was rightly to take the victims for treatment at the hospital first and further considering the overall facts and circumstances of the case, complaint at 20:45 hours of the same date, cannot be termed to be delayed complaint.

(b) This is further clear on perusal of the deposition of the complainant, other police witnesses, report u/s. 157, station diary and further noting that there was curfew and police was busy in law and order problems.

(c) Submission as to illegality or numerous irregularities adding that there is no C.R. Number in the Inquest Panchnama are not creating any doubt. It has been submitted that the FIR was ante-timed and ante-dated hence cannot be believed.

(d) It cannot go out of the mind of this Court that on those days of communal riots, police has to do more than the routine work, if one separate team has been sent for inquest, only then it is possible that the C.R. No. might not have been inserted, which is no lapse and seems to be no irregularity at all. It cannot termed to be fatal and is not capable to challenge the authenticity of the FIR. This Court is of the firm opinion that in view of the deposition of the different PWs and in light of the above referred documents, non- insertion of C.R.No. in the Inquest Panchnama, is not fatal to the prosecution case.

(e) Moreover, upon perusal of the record, it is noticed that the C.R. number is not mentioned in almost all inquests whether it is dated 01/03/2002 or even of 07/03/2002 or even of 10/03/2002, therefore, also it is clear that non insertion of C.R. No. in the inquests is routine for police and is not doubtful to conclude the FIR to be ante-dated or ante-timed.

(f) This Court is aware that lodging of complaint and even F.I.R. immediately after the occurrence reduces the possibility of concoction or fabrication. But then, in light of the facts and circumstances of this case, when the police has to handle one after another serious situations and that looking to the disturbances the police force was found to be less, lodging of complaint at the mentioned time can be termed to be having lodged it immediately as in the facts and circumstances of that day, registering the complaint on that very day itself is satisfactory. The police and the senior P.I. himself was occupied in arranging to take the victims to Civil Hospital for treatment from the site.

(g) It has been submitted that the FIR has not reached the Court of Metropolitan Magistrate Court on the next day. It is known to all that the Court functioning was obviously hampered and disturbed during these days of curfew and riot. Looking to the problems faced by the police, it might not have been possible to take the FIR on very next day. While appreciating the evidence and adjudging the submissions made by the defence, the Court has to adopt practical approach. This Court is of the firm opinion that practically, it was not possible for the police to manage to send the FIR on the very next day. Hence in the facts and circumstances of the case, FIR having

reached on 02/03/2002 at 11.00 a.m., is found to be satisfactory and that there is no undue delay. Looking to the position of those days, the effect of which continued for about 45 days thereafter, needs appreciation and in view thereof, the FIR is held to have been sent absolutely on time. Hence this Court does not find any merits in the submissions on both the above aspects.

(h) Moreover, upon perusal of page No.360 wherein the word antedated has been given meaning in the book of Justice C.K. Thakker titled as, “Judicial Officers Law Lexicon”, Second Edition, published by Whytes & Co. reads as under :

> ***“ Antedate – Documents bearing dates of 1st & 2nd April but in fact, coming into existence on 11 the April are ante-dated documents (AIR 1954 SC 322) Finding as to ante-dated documents must be based on pleading and proof of evidence (AIR 1971 SC 2177) ”.***

(i) It is clear that except putting the suggestion to the complainant and the first Investigating Officer, the defence has not done anything to probablise its defence that the complaint was ante-dated and ante-timed. Both the witnesses have clearly denied the suggestion. When the accused raised the plea that the complaint was ante-dated and ante-timed, it is necessary to see to it that whether the prosecution has proved by cogent evidence that the complaint was written at the mentioned time and date.

In view of the oral evidence of the complainant, the first Investigating Officer and upon perusal of different records kept

at the police station and noting the fact that the same was sent to the Court of learned Metropolitan Magistrate on time, and further considering the riotous situation, the accused if is desirous that the Court should believe the defence, than it is required to establish probability that the complaint was ante-dated and ante-timed. But nothing of the sort has been done by the defence. The simple suggestion of the defence cannot be termed to be reasonable doubt or effective rebuttal to the presumption of the proprietary to the act of filing complaint as official act.

Considering the above discussion the meaning given to the word “antedate” by Hon'ble the Supreme Court of India as compiled in the book and upon appreciating the oral evidence of the police witnesses including the complainant and upon seeing the record of the police station produced on record, this Court is convinced that the complaint is neither ante-dated nor ante-timed but was filed on the date and time mentioned in the complaint viz. 20:45 p.m. of 28/02/2002. No reasonable doubt is created against the date and time of the FIR. Hence the submission based on this cross examination is found to be worthless.

(j) It is known to all and has come on record that after the fateful date of 28/02/2002, the communal riots in the city were continued for more than a month. At most of the area of the city, the curfew was in force, the Courts were not able to function in its full, production was increased and that the normal working of the Court of Magistrate was certainly affected it was since situated in such affected area and therefore, sending the F.I.R. late by few hours is not a sufficient

ground to draw adverse inference against the investigating agency as it is routine office work.

(k) In the judgement produced by learned Special Public Prosecutor at **Sr.No.34** reported at **2003 SCC (Cri.) 641** has been referred and what is held is applicable in the case also.

"In the facts of the cited case as observed in the judgement, the High Court was pleased to observe that, "the delay of 26 hours in sending the special report by itself was enough to allow the appeal and to set aside the conviction of the accused. In our opinion, the period which elapsed in lodging the FIR of the incident has been fully explained from the evidence on record and no adverse inference can be drawn against the prosecution merely on the ground that the FIR was lodged at 9.20 p.m. on the next day. There is no hard-and-fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR, which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc., have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR."

(l) The judgement from the list of learned Public Prosecutor at **Sr.No.16 and 21** deals with delay in recording the statements. The judgement at **Sr.No.16 Head Note-C** is as under :

Head Note-C *: Late recording of the statements of the witnesses by investigating agency - not fatal.*

In the judgement at **Sr.No.21 at para-8** it is observed that "*In the instant case, where the deceased is a husband and eyewitness is the wife, it is natural that she should be overwhelmed completely distraught by turn of events and if there is some delay in recording her statement, it cannot be taken against the prosecution in that way.*"

Needless to add that in the case the witnesses have seen mass murders and they were helpless since were placed at relief camps and it was not within their control to get their statements recorded. Hence, the submissions through cross-examination of the defence that since the statements were recorded after two months or so, the same cannot be believed as having possibility of embellishment and embroidery is held to be of no worth.

(m) The **defence** has cited the judgement in its list at **Sr.No.25** to submit that delay in sending FIR to the Court is serious. But, then in the facts of that case, it was non explained delay and that it was held that such delay touches the credibility of the prosecution case.

In the instant case, here is not unexplained delay.

Secondly, the delay is a relative terminology, has to be seen keeping the surrounding facts in mind. By doing so, the delay in sending FIR in this case does not seem to be a serious delay so as to become fatal to the prosecution case. Moreover, reasonable explanation can very well be given by the circumstances clearly visible in the facts of the case.

Hence there is no doubt in the mind of the Court that the complaint was lodged at the mentioned time and that it was not ante-dated and ante-timed as submitted. The FIR is also held to have been filed on time as discussed above.

16. RECOVERY AND DISCOVERY :

(1) There is relevant circumstantial evidence against the accused in the nature of recovery of the weapons, pursuant to the disclosure statement made by the accused while they were in police custody.

(2) The weapons discovered have all been proved to have been in possession of the accused at that time and to have been been used by the accused in commission of the charged crimes.

(3) Considering the totality of the circumstances and role attributed to the accused by the identifying witnesses, the involvement of these accused in the alleged offences can reasonably be seen.

(4) The degree of satisfaction that would be required for holding the accused guilty of the offences in question, has not been derived only from this evidence alone.

(5) It is true that there is no recovery or discovery from almost all accused except the five i.e., A-41, A-44, Bhavani, Guddu and A-22.

In the opinion of this Court, there is no value for such omission in duty by the Investigating Officer. Firstly for the mistake or omission or fault of the Investigating Officer, the witnesses cannot be allowed to suffer and secondly, the accused cannot be allowed to get benefit illegally.

(6) After all, recovery or discovery are corroborative piece of evidence whereas the oral evidence given by different eye-witnesses, panch, police officers and occurrence witnesses, supports the fact that most of the accused were holding deadly weapons in their hands at the time of the incident. Their presence in the mob possessing deadly weapons can not be doubted. Even there is nothing on record to disbelieve this version of different PWs.

(7) Learned Special P.P. has also cited **Sr.No.14** to support his submission that the discovery of the weapons under Section 27 of Indian Evidence Act, at the instance of the accused, is sufficient to connect the accused with the crime which is even settled position of law. As has been held at para-13 of the cited judgement, it becomes clear that if there is no manner of doubt in the statements made by the accused, their willingness and the preparation of preliminary panchnama and final recovery of concealed weapons from the places shown by the accused, the material evidence of discovery of weapon used in the crime, through proper panchnama is sufficient to connect the accused

with the crime. This is what all has happened in case of the five accused.

(8) For the defence, reliance was placed on citation at **Sr.No. 22** wherein it was submitted that since the blood stain has not been found and since the weapons were not shown to the doctors who conducted Postmortem, such recovery cannot be given any weightage.

(9) It needs a note that in the cited judgement the date of occurrence is 13/05/1973 and the judgement is dated 19/03/1974 as is clear in the facts of the case itself, but, in the instant case, the occurrence took place in the year 2002 whereas, the judgement is to be delivered in the year 2012. Moreover, this is the case where the previous investigation has been found to be most unreliable by this Court mainly as far as recordance of the statement of the witnesses are concerned which was not the fact in the cited case. Expectation of blood stains in very delayed discovery is not practical.

(10) In the fact of this case, Hon'ble Supreme Court was pleased to appoint SIT to do further investigation in the case as the previous investigation was alleged as improper. Thus, the facts of the cited judgement and the present case are absolutely different from each other. It would therefore be not appropriate to pick up one line from some judgement to decide something in this judgement. In the opinion of this Court, the citation, therefore, does not help the defence.

(11) The **defence judgement at Sr.No.24** is also not applicable to the facts of the case as in the said case, as is clear

from the facts of the case, the articles seized were not sealed but, same is not the position in the instant case.

As has already been discussed for the judgement at **Sr.No.23**, facts being different, the cited judgement cannot have any application to the present case.

(12) The respective discoveries have been discussed at an appropriate part of the Judgement. Suffice it to opine that the depositions of the PW, Panchas and / or of concerned Police Officer are duly corroborated by all those discoveries, the said are therefore, held to be relevant, admissible and credible evidence. It has to be borne in the mind that out of 62 live, dead and absconding accused, only about five discoveries have been made. If the previous investigator wants to falsely discover weapons why it has not been done in case of all the accused. This is exhibiting that the discoveries have not been made falsely.

17. HOUSES ALLOTTED TO THE VICTIMS OF CRIME BY THE ISLAMIC RELIEF COMMITTEE IS THE CAUSE FOR FALSE INVOLVEMENT :

a) To many of the victim witnesses, this common question has been asked which is on the ground that since Islamic Relief Committee has allotted houses to Muslim victims PW, the victims under the instruction of the said committee are falsely involving the accused.

If this could be the truth, in that case, all victims should have involved all the 62 accused, but then that is not the case.

Moreover, Islamic Relief Committee is neither suggested nor shown to have been interested in this litigation in any manner. Hence, this ground seems to be an imagination of the defence without having any base or substance. Firstly, this Court holds that this Court does not find any case of false involvement as the expression of the victims, their innocence, their not understanding at times many things, their ignorance are all such things which rules out any scope of false involvement of any of the accused at all.

18. THE KIND OF THE VICTIM WITNESSES :

(a) The PWs are mostly illiterate, very less educated and most of them live their life hardly above the poverty line. The quick succession in which numerous incidents of cruelty of ghastly crime and of horrifying and terrifying commission of crimes have been witnessed by the PW, the PW may naturally not give microscopic details about the accused. Hence, the same cannot be considered to be a point to disbelieve the PW.

(b) The victim witnesses were found to be very innocent, ignorant and of the kind wherein at times, they were not understanding head and tail of many questions. They were apparently less than rustic witness, were getting tired of the long cross-examination and as observed, to cut the matter short, were giving at times, affirmative or negative reply as per the tone of the cross-examiner. They were feeling very embarrassed on series of questions, which at the end of the trial even this Court finds to be of no relevance at all. Firstly, any of the cross-examiner has not argued on logic or reason of most of the cross-examination and secondly with reference to

the context, many of the questions were found to be of no significance.

(b-1) The illustration of two opposite suggestions are numerous but one which is handy is paragraph 19 of PW-107 is placed herein below wherein the witness was suggested that 'on that day, the mobs were coming from all the four corners'. When the witness had given reply in affirmative, immediately as a next question, the cross-examiner suggested that since the PW was running here and there and was hiding, he cannot know from which side, the mob was coming. The purpose of such two exactly contradictory suggestions have yet only remained in the bag of the cross-examiners which have not even brought out in the final arguments but it seems that here the PW has given both the affirmative replies, which is obviously conveying that he has not understood either of the questions properly or he replies according to the tone of the cross examiner to cut the cross short. It cannot go out of the mind of the Court that what the witnesses have come to depose is not on their happy experience but on one of the most sad experience, it may be the worst experience of their life in which they have lost everything of their life and that their mentality would always be not to remember those horrifying moments and therefore, the attitude by which such moments are lessened, sounds to be very natural. The Court has a larger responsibility to read between the lines as well for which the best method is observation of the expression of the P.W. which is the gift to every trial Court.

(b-2) It is to be noted that such cross examination always confuses the witness and has a fatiguing effect.

The P.W. would like to get rid of such mental exercise to which he is not habitual.

(b-3) It is true that, sky is the limit for the cross examiner, but when the PWs are like these, the Presiding Officer must understand the purpose of such cross-examination. In this case, the purpose according to this Court was surely to confuse ignorant, innocent and rustic witnesses. When the Court is able to make out such intention and when the Court has reason to believe that the purpose of cross-examination is not to unearth the truth, but is different, the duty of the Court is more while appreciating such evidence and that is what this Court is to do.

(b-4) This Court has observed the demeanour including the facial expression of all the witnesses. The observation is barring one or two exceptions, the victim witnesses were found to be truthful, reliable, credible, simple, innocent and were natural. They were certainly not testifying at the instance of any N.G.O. or person.

19. THE PROBABILITY ON THE ASPECT OF HEIGHT OF WALL OF S.T. WORKSHOP :

It is true that many witnesses like PW-162 and others have admitted that the wall of the ST Workshop was very tall and then there were angles and fencing above it. Merely this admission does not improbablize the version of the witnesses that burning rags were thrown from inside the ST Workshop and even stone pelting was also done from there. Along with the admission it needs to be remembered that this is the

premises of Workshop where very huge drums were lying near the wall. Even on the date of the visit of this Court also the drums of about 6 to 7 feet heights and even taller than that were lying near this wall. Moreover, it is an admitted position that there were watch towers situated inside the ST premises which were of the height of 2 to 3 times of the height of the wall. This watch towers had staircases. Hence it is not improbable or impossible to throw the burning rags and stones from this staircase or drums in ST targeting Muslim Chawls as the Muslim chawls are exactly situated opposite the wall. The cross-examination on this point therefore, has no impact at all. Here, it is fitting to note that accused Pankaj, Ranchod and Darji (A-49, 57 and 59 respectively) have not done these acts and omissions complained of since through no P.W. it stands proved beyond reasonable doubt. What is being hold is that, the occurrence of throwing stones and throwing burning rags from inside S.T. Workshop is absolutely probable and hence is believed to have occurred. It is different that the P.W. could not ascribe this role to any of the accused as proof beyond doubt.

20. CROSS STONE PELTING :

(1) Numerous witnesses have been confronted on the ground that they have stated before the SIT about the fact of cross stone pelting to have been done by the Muslims. This Court do not see any force in the submission that it is in any way providing any justification to the occurrences done by Hindus on that day. Commission of crime can never be justified except in the circumstances provided by the penal code or by any statute as exception.

(2) It is notable that throughout the trial this question has been posed to the witnesses and some of the witnesses have also consented to the suggestion and they have also stated it to the SIT as well as before the previous investigator.

(3) Beyond the act of stone pelting, no other allegations have been levelled against the Muslims. Looking to the widespread riot and series of occurrences, stone pelting by a few Muslims, in fact is a very natural reaction when it is an admitted position that Nurani Masjid was attacked and the religious feelings of the Muslims was hurt. It is matter of common experience that every human being would react to every situation in one's own way and if some of the Muslims have reacted by cross stone pelting which did not last long for more than few minutes it has no significance. This question in cross has received almost unanimous explanation by every such PW that the cross stone pelting was done to protect Nurani Masjid. This being quite natural and since it did not last long or since it has not developed to the stage of commission of serious offences as were committed by the accused, this Court do not attach any value to this aspect.

21. CROSS VERIFICATION OF THE PW INTER SE :

(1) The defence seems to have chosen a theory that the witness should be doubted whose version does not tally with another PW when they all are witnesses of the occurrence.

(2) In the humble opinion of this Court, this theory cannot be made applicable in the case on the hand. Such kind of theory can be effective when the offence is against individual,

committed by an individual or a group of individuals, when the canvas of the offence is quite limited, the time spread of the offence is limited and the viewer of the occurrence is seeing the occurrence from beginning to end.

In the case on the hand, mass crimes have been committed, it was communal riot by the majority community against the minority community, the canvas of the entire scene of offence along with its timing was tremendously wide, the point from which one witness has seen or observed the similar occurrence is not point from which another has observed or seen at the same time. Here even if both the PW are giving very honest account of the occurrence it can so happen that what was seen, noticed or observed by one PW could not be seen, noticed or observed by another as the time, place, observation capacity, perception capacity and reproduction capacity, coding and decoding the details of the occurrence in the mind differs from PW to PW.

(3) Most of the victims are injured eye-witnesses and or are sufferers, victims or relative of deceased victims of this mass crime which was such a terrifying, horrifying and ghastly occurrence that it must be the first experience to see such incident for any of the PW because in fact such occurrence where so many Muslims were done to death has not at all taken place in the knowledge of P.W.

(4) The Court needs to bear in mind that the witnesses have come to the Court to depose on the worst experience of their life and that they must have passed through different physic stages which must have come in their way in effective

reproduction of the entire occurrence.

(5) Moreover, it is also unusual that the witnesses have to depose after 8 years of the occurrence, where they tend to forget the minute details of every occurrence and what eternally remains in the mind is their suffering and responsible accused for the said suffering since they must have made all conscious efforts to forget the communal riot and to join with the main stream of life. Each P.W. has to be assessed on principle of probability and sequence and natural events on one's own merits. In fact such cross-examination in the facts and circumstance of the case is hypothetical and deceptive to P.W. who has no opportunity even to understand as to what is being asked to him.

(6) In view of the all the foregoing reasonings, this Court is not inclined to disbelieve any PW just because another PW is telling something different, except in the case when the two PW are admittedly proved to be at the same place, at the time, in the occurrence, and were together on every moment of that fateful day. Every PW shall have to be adjudged or appreciated on his own merits or demerits.

22. NO PROPER NARRATION BY PW :

(1) It is difficult to accept that the PWs were in such a frame of mind on 28/02/2002 and even thereafter, so as to give proper narration of the happenings in detail including the names of assailants or the rioters. Hence, even if the name of the accused are not given out of fear or mental state of the victim then also the previous investigation is not faithful record.

(2) Even after extensive cross done, nothing has elucidated to discredit the PW. The white lie if any, in the statement of SIT could have been revealed as no tutoring can help in the skilled cross-examination that too when it is done in great details and for three long days as done in case of most of the PWs.

23. FORTIFICATION FROM OCCURENCE P.W. :

The PWs who have not named any of the accused or do not implicate any of the accused by attributing any overt act to any of the accused are the occurrence PW who can undisputedly termed to be such on whom implicit reliance can be placed. Had the case been concocted and got up, such witnesses could have pointed out any of the accused attributing any role in the riot but they have not done so. Even such PW have given detailed account of the horrifying occurrences discussed in depth under that head. This fortifies the version of the PW who involves the accused.

24. PW FOR WHOM ACCURATE REPRODUCTION OF THE OCCURRENCE IS COMMON :

It is argued that the PW are got up and concocted otherwise they cannot give any account of the occurrence after eight years. The PW mother, who has lost her child in front of her eyes should have deep-rooted impact and impression about what was done to her son and who did it. Such PW can accurately reproduce the events as it must have left permanent, unforgettable, impression in her mind. Hence, in such cases passage of eight years is of no significance. No

substance in the argument.

25. LIGHT AT SITE OF WATER TANK :

(a) It is vehemently argued that the alleged time of occurrence is after sunset and therefore, for want of light the accused even if were there cannot be identified. It needs a note that the entire evidence of horrifying evening incident that of the 'Khancha' or water tank or call it below water tank, between Gangotri Society and Gopinath is related to the mass murders of victims or their relatives. The victim of this mass crime were set ablaze alive here.

(b) On account of fire all around, light can never be an issue to identify the accused as the light of fire must be sufficient to identify the accused. Even on the aspect of light also the cross-examination was done. For an illustration, PW-179 in her examination-in-chief itself, clarified at paragraph 18 that on account of light all around of the fire existed there, the witness could see the dead bodies lying on the road and torching all around.

(c) Moreover, as is clear from the testimony of at least two of PWs that 3 to 4 days before the date of incident, it was Bakri-Eid (from 23/02/2002 to 25/02/2002), one of the greatest festivals of Muslims and thereafter on the date of the incident, it was night of fifteen chand, the next day of Choudhavi-Ka-Chand, which is full moon night. For this reason, also there must be sufficient light on the night of 28/02/2002 (searched from website : http://www.irulz.com/islamic-calender.html/ article on Islamic calender and Islamic year – February 2002).

(c) Looking to the time of the evening occurrence, say in between 5.30 and 6.30 p.m. and when the site of the offence of evening incident - 'U' shaped place is situated between the two residential societies, light is bound to be there. It can hardly be expected that any residential area at such time would be in total darkness.

26. SUBMISSIONS ON CROSS OF DEFENCE :

It needs a note that the testimony regarding the presence of particular accused at the site of the offence, the participation of particular accused, the veracity of the PW, the aspect of probability of the applications given to SIT, on affidavits at Hon'ble Supreme Court of India were severely challenged during the cross-examination and the witnesses were confronted at great length on all such counts during the trial, but it was astonishing for this Court to note that the strength of the challenge has tremendously reduced at the stage of the arguments. Though it was not entirely given up but the submissions on most of the part of the cross-examination was not done at all.

27. CROSS ON BELATED RECORDING OF STATEMENT :

The police who came at the scene of the offence and taken the burnt victims to the hospital was a step in the right direction, but thereafter at the quickest possible time the police ought to have recorded the statements of the witness. If the police did not record the statement of the witnesses, no fault can be found with the PW on that count but every victim

witness was crossed with all vigour as to why he has not got his statement recorded before April or May 2002, as if after the occurrence of riot of 2002, it was in control of the PW as to when his statement should be recorded.

28. NON-PRODUCTION OF PROOF OF RESIDENCE ETC.:

In the case on hand, the fact that the rioters had set the houses of Muslims on fire is undisputed and in fact not challenged at all by the accused. Hence, if such Muslims who have lost everything, are unable to produce proof of their residence it cannot be taken otherwise. Secondly, when the entire house was burnt, all the proof or evidence in the house of the victim would have also been obviously burnt. It therefore, cannot be accepted that for want of production proof of residence it cannot be believed that in fact the PW were not residing in affected Muslim chawls.

29. SILENCE OF SUFFERERS :

It can safely be believed that the PW must have gone to reside at Patiya only after the PW had decided not to speak against the accused or about the incident. Their natural conduct therefore, is bound to not to say anything about the incident to anyone. The resolution must have been broken by the Muslims after the SIT was constituted. There is nothing to be doubted about the silence of the sufferers as submitted.

30. APPRECIATION OF EVIDENCE :

(a) Appreciation of evidence is not a question of law. Whether an evidence of witness is to be believed or not to be believed is not a matter of law. The belief or disbelief of a Statement made by a witness before the Court depends on so many circumstances that it is impossible to lay down any hard and fast rule in that regard. Contradicting a witness by referring to his previous statement is only one of the modes by which a witness may be discredited. Section 162 of the Code, which, despite a general prohibition, permits a limited use of statements recorded by the police during the investigation for the purpose of contradicting a prosecution witness. It does not lay down any rule of law or procedure to the effect that the evidence which has been contradicted in this manner is to be excluded from consideration in every case.

(b) It is settled position that on facts there is no precedent and that appreciation of evidence is a question of fact and not of law. In the case on hand, there are many special facts, like trial only could be started seven years after the incident, lot of changes must have undergone in the position of site of offence, there may be change in the looks of some of the accused, the residences of most of the victims have changed, many sufferers had left for heavenly abode and now benefit of their first hand experience is not available to the Court, some of the victims have migrated to another State, some of the accused had also passed away.

(c) What is eternal is agonies, suffering, memories, griefs, unforgettable experience of horrifying and terrifying day when parent had to become mute witness of outraging modesty of their daughters, mothers were helpless when their infant

children were snatched away from them and thrown in fire, all around cries of helpless women and children and scenes of burning dwelling houses and so on and so forth. This needs to be kept in mind.

(d) Considering this important aspect, negligible omission existed in SIT statement has been accordingly appreciated while appreciating the evidence.

(e) While appreciating the evidence in this case, following principles have also been borne in mind as guided in the judgment reported at ***A.I.R. 1983 SC 753 in the matter of Bharwada Bhoginbhai Hirjibhai v. State of Gujarat***. In the judgment Hon'ble the Supreme Court was pleased to hold that undue importance to minor discrepancies should not be given, the power of observation differ from person to person, in regard to exact time of an incident or the time, duration of an occurrence, people make their own guess work and estimate and that at times the witnesses are liable to be over awed by the atmosphere of the Court and the piercing cross examination can result into nervousness. For ready reference, it is useful to reproduce the following paragraphs of the said judgment :

“**Para.5 :** .... Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :-

(1) By and large, a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily, it so happens that a witness is overtaken by events, the witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties therefore, cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large, people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals, which varies from person to person.

(6) Ordinarily, a witness cannot be expected to recall accurately the sequence of events, which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination

made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

Para.6. Discrepancies, which do not go to the root of the matter and shake the basic version of the witnesses, therefore cannot be annexed with undue importance. More so when the all-important “probabilities - factor” echoes in favour of the version narrated by the witnesses.”

31. POLICE WITNESSES STATING TO HAVE NOT SEEN THE ACCUSED NAMED IN COMPLAINT :

The suggestion that the Police PWs No.264, 265 and 266 have not seen the five accused named in the complaint at the site, has not impressed this Court. Firstly, because, from the evidence of different credible PWs, it has been clarified that the situation was too tense, the law and order problem was apparent, the violent mob of rioters was uncontrollable, the attempt to disperse the mob was made very often, but was not successful as before the police officer returned at their point, the rioters used to reassemble. This situation throws focus on the fact that it was not possible for every police official or every PW to see all those who were present at the site. Not noticing the accused by these PW does not create reasonable doubt about their presence on that day because that seems very natural to happen. Secondly, this court has adopted the

practice while appreciating the oral evidence in this case, that neither any accused shall be held guilty basing upon police PW alone nor basing upon the oral evidence of police personnel alone any of the accused shall be granted benefit of doubt. In the peculiar facts of this case, it is extremely unsafe to decide either guilt or innocence solely basing upon the oral evidence of the police. Details on the topic is also discussed under the chapter of previous investigation.

32. TUTORING OF NGO, SOCIAL WORKERS, ETC. :

It is notable that it is not alleged that the NGO leaders or lawyers or the social workers have any personal enmity or ill-will against the accused. Hence the suggestion in the cross-examination of PW that they have been speaking as was taught to them, is found very irrelevant. What would be the benefit of such NGO is nowhere suggested except suggesting that it was to defame State of Gujarat. But then, the State of Gujarat is not an accused but is the prosecuting agency which was forgotten it seems. No substance is found in this submission.

33. PRESSURE, PERSUASION AND OBLIGATION THEORY :

The theory of pressure, tutoring, persuasion, rewarding the obligation of giving new house by the Islamic Relief Committee are all the suggestions raised in the cross, which have miserably failed to crop-up any reasonable doubt in the mind of the Court.

34. IMPROBABILITY AND INABILITY TO NOTICE THE

ACCUSED :

The submission of the defence is devoid of any merit that the witnesses could not have seen the rioters and they cannot identify them from the terrace as most of the PW took refuge on terraces. As a matter of fact, sitting at the terrace would afford a better view of the mob of rioters than the view that could be obtained by standing near the occurrence. Vision on height is always better than on the same level. This aspect of seeing the accused from terrace is therefore held to be most credible.

Inability to see from the terrace is the creation of the defence, which is not found logical and probable hence question of drawing any inference from such question would be totally out of question.

35. PROBABILITY OF BEING AT TEA-STALL :

The submission that it is improbable that the PW would go to tea stall in the morning is not based on reality of life. There is absolutely nothing uncommon or unusual for the persons sitting at the nearby tea-stall or the tea-stall in front of their residences early in the morning and reading the newspaper at the tea-stall and gossiping with some friends there. Hence, the presence of the witnesses at the Milan Hotel near Nurani etc. is not a matter of doubt, but it is rather very natural thing when on account of call for *bandh* they have not to go for their occupation. It is very common and natural for male to go to nearby pan-stall or tea-stall in leisure time.

36. FIRST SITE PLAN :

It is submitted by the defence that the first map of the site or the first site plan prepared by one Hasmukhbhai has been concealed and suppressed by the prosecution and had that been produced on record, it would have thrown enough light about the topography existing in the year 2002.

In the opinion of this Court, if the prosecuting agency wish to suppress the first site plan, why would it include the mention of it and the name of Hasmukh in the charge-sheet. It needs a note that there is a mention of the name of the witness who has prepared the first site plan. None of the investigating agency has stated that the site plan was prepared and received by them during their investigation. It therefore seems quite probable that only Yadi might have been issued but the same was not acted upon. Even there is nothing on record to believe that the Yadi was indeed issued and was duly received by the said Hasmukh.

In fact, this adds one more facet of irresponsible investigation by first Investigating Officer Shri Mysorewala, but in no way it grants any benefit to the accused.

37. EXAGGERATION AND / OR DENIAL ON OCCURRENCE :

It is submitted by the defence that the incident has not occurred and in the alternative, the version of the PWs about the occurrence is exaggerated as had it been true, the PWs would not have survived and even the PWs also must have been

killed or at least injured by the mob.

In the opinion of this Court, it must be remembered that this is a case of mass race murders, hence there was no specific object to kill any specific person or specific number of persons. Hence the cross-examination on the aspect that some of the victims were not physically assaulted by the rioters though the riot mob could have done so, does not prove the defence case of improbability.

It is a matter of common experience that in such circumstances the mob always chooses soft target who can be easily victimized, who normally would be isolated, individual and not the persons in the group except when the attackers are in bigger group. Those who were saved by sheer good luck, were found to have been in group of Muslims. The mob has slaughtered and burnt group of Muslims when they could tightly cordon them near Hindu society, but the mob did not go to terrace knowing that the groups of Muslims are on terraces.

38. WHY BURNT ? :

The purpose of the rioters to select the mode of burning can be because setting the houses on fire was the way to terrorize the Muslims and to endanger them with minimum danger to the rioters themselves. It would also additionally cause damage to the property itself and create more terrible impact or fear in the minds of all concerned.

Moreover, to burn a person alive is known modus of murder. No evidence is usually left behind and there is no

physical contact between the assailant and the victims. Hence evidence of such murder is seldom available as mostly the victim is reduced to grilled meat. Additionally, when the mob were setting the account with Muslims of Godhra Carnage 'Tit for Tat' attitude is common hence 'burns for burns' inferred to be the theory.

39. MENTALITY IN MOB :

It is well known that when an individual becomes a member of the mob, he loses his identity and takes on the identity of the mob. This is termed as de-individualization by psychologist and once this sets in, any person, however, mild or non-aggressive he is, he does what the mob does. This is what it is often witnessed during communal riots. There is no reason to believe that this did not happen at Naroda Patiya on that day. It is rather natural to happen. In light of this theory the submission to be made to defend A-47 has not been accepted. The PW who involves A-47 in the riot has also fairly stated that A-47 is otherwise a good person who is fair and lenient in his fiscal transaction. This cannot help A-47 as what is under scrutiny is not fiscal affairs of A-47 but his conduct in the mob.

40. MINOR VARIATION :

This Court is not inclined to give much importance to the minor and immaterial variation among the version of the witnesses even from the SIT statement. Some such variation is bound to exist when a number of victim witnesses are narrating about an incident involving a large number of happenings, large number of assailants and large number of

victims. The possibility of some persons making either some mistake or perceive some facts in slightly different way, cannot be ruled out and as is already known observation power and reproduction varies from person to person and circumstance to circumstance.

41. PRINCIPLE OF *CORPUS DELICTI* AND PRESUMPTION OF DEATH:-

(a) In view of the settled legal position, evidence of the dead body or *corpus delicti* in cases of murder is not a sine-qua-non, hence from circumstantial evidence, it can be proved that the missing persons were murdered. Thus, a charge of murder can be established without the dead body being found. It is clear that the 96 dead persons were last seen on the date of the incident. They were out of their houses when communal riot was on. The rioters would not have allowed them to go and when they are not heard or seen for the last more than seven years by their close relatives, who might have naturally heard or seen them, had they been alive, the only inescapable conclusion is that they had died and that too an unnatural death in the riot. The presumption of their death under Indian Evidence Act can be drawn and is drawn by this Court in the case on hand for the deaths as the facts and circumstance so commands.

(b) It is worth referring a Judgement of **Prithipal Singh & Others v. State of Punjab and another** with Jaspal Singh, Deputy Superintendent of Police Versus State of Punjab reported at (2012) 1 SCC, P.10 which even has been cited by learned P.P. at **Sr.No.30** wherein Their Lordships had an

occasion to discuss the principle of *corpus delicti*. It is well known that in some of the cases like the one on the hand, it is not possible to trace out or recover dead body and still the person had died. In this Judgement, the Hon'ble Supreme Court was pleased to hold that *"Non-recovery of dead body was inconsequential since recovery of dead body is not a condition precedent for conviction for murder."*

The citations of the learned Public Prosecutor at **Sr.No.3**, **26 and 29** produced are on the same line.

(c) At paragraph 50 (supra) of this very judgement (Prithipal Singh), Hon'ble Supreme Court has observed under the title of 'Extra-Ordinary Case' as under.

> ***"Extra-Ordinary situation demands extra-ordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extra-ordinary fact situation requires extra-ordinary measures."***

This principle is squarely applicable in the case as the situation on several aspects in the case on the hand also is very peculiar as has already been discussed by this Court while the appreciation of the Evidence in this case the judicial mind has kept this in the mind.

(d) As has been held in the judgement cited at **Sr.No.26** by the **learned Spl. P.P.**, even if *Corpus Delicti* is not found, the conviction can still be based on circumstantial evidence or direct ocular account of eyewitnesses. The judgements cited at

Sr.No. 27, 28 and 29 of the learned P.P. are also propounding the similar principles.

(e) In the judgement at **Sr.No.30** of the list of the learned Special Public Prosecutor, it has been held and reported at Head Note-K that, **"*recovery of dead body is not necessary and it is held that conviction for murder does not necessarily depend upon Corpus Delicti being found. Corpus Delicti in a murder case has two components - death as a result and criminal agency of another as means - where there is a direct proof of one, the other may be established by circumstantial evidence.”***

42. CONCEPT OF "BEYOND REASONABLE DOUBT" :-

(a) Learned advocate Mr.Kikani and many other learned advocates for defence have emphasized again and again that this is a fit case wherein the accused are entitled for benefit of doubt on numerous counts, that the prosecution has miserably failed to establish the guilt of the accused and even this case since has not been proved beyond reasonable doubt, hence grant of benefit of doubt to all the accused would be just.

(b) The concept needs to be understood in light of the judgement discussed below. The phrase ‘beyond reasonable doubt’ is the standard of proof that is expected in a criminal trial. The following observations of Lord Danning in **Miller v. Minister of Pensions (1947) 2 A.E.R. 372** which have been referred to by Hon'ble the Supreme Court of India are reproduced which reads as, *“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law*

would fail to protect the community, if it admits fanciful possibilities to deflect the course of justice." - -

(c) The view of the noted author is quoted here in the judgments, the earliest judgment being **Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793**, at page 800 : (AIR 1973 SC 2622 at P. 2627) has a following passage.

> ***"The evil of acquitting a guilty person light heartedly as a learned Author (Glanville Williams in 'Proof of Guilt') has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted persons and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent."***

The principle propounded by way of the above cited judgement on even unmerited acquittals is discussed as equally dangerous for the society where subsistence of Rule of Law is the dream.

(d) Learned advocate Mr.R.N. Kikani has also pressed into

service the defence's citation **No.59**. If the citation is read into its depth, then **para-20** is conveying the most important part of the judgement based on the jurisprudence of criminal justice delivery system. Para-20 reads as,

> ***"Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubt or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the pill that it is better to let 100 guilty escape than punish any innocent. Letting guilty escape is not doing justice according to law (See Gurubachan Singh v. Satpalsingh and others (AIR 1990 Supreme Court 209). Prosecution is not required to meet any and every hypothesis put forward by the accused (See State of U.P. v. Ashokkumar Srivastava (AIR 1992 Supreme Court 840). A reasonable doubt is not an imaginary, trivial or merely possible doubt but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human being are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. (See Indersingh and another v. State (Delhi Admn.) (AIR 1978 Supreme Court 1091). Vague hunches cannot take place of judicial evaluation. (A judge does not preside over a***

criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man, does not escape. Both are public duties.") (per Viscount Simen in Stirlane v. Director of Public Prosecutor) (1944 AC(PC) 315) quoted in State of U.P. v. Anilsingh (AIR 1988 Supreme Court 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."

(e) A caution against over emphasis on giving benefit of doubt to the accused for all kinds of defects or lacuna has been given by judgments of Hon'ble Supreme Court of India which has been kept in mind. For ready reference, some such paragraphs from the reported judgments of Hon'ble the Apex Court are reproduced herein below :

(e-1) AIR 1973 SC 2622, in the matter of Shivaji Sahebrao Bobade and Another v. State of Maharashtra ;

"Para.6. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt, which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a

guilty person light-heartedly as a learned author has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a, public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons, it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent ..." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analyzing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India, the law has been laid down on these lines long ago."

(e-2) AIR 1994 SC 1418 in the matter of State of **WB v. Orilal Jaiswal and Another**;

Para.14. Although, the Court's conscience must be satisfied

that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. **Lord Denning in Bater v. Bater**, **(1950) 2 All ER 458 at p.459** has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.

Para.15. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law."

(e-3) Expectation of exactness in the testimony of the witnesses is itself, exaggerate expectation. As has been observed by Hon'ble the Supreme Court in the matter of Collector Of Customs, **Madras And Others v. D.Bhoormull** reported at **AIR 1974 SC 859** at paragraph No.30, "All exactness is a fake".

"**Para.30.** ... This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no

statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs, absoluted certainty is a myth, and as Prof. Brett felicitously puts it - “all exactness is a fake”.

(f) Needless to mention that as a matter of fact this judgement helps the prosecution case and it puts the Court on its guard against free and easy grant of benefit of doubt. It now needs to be understood that benefit of doubt is a very vital concept, which has to be put into use in the interest of justice and it is not merely to protect the interest of the accused. The balanced view is always the best view.

43. PROBABILITY OF OBSERVATION BY PW :

The submission is not impressive that when stones, bricks, kerosene/petrol bottles etc. were being thrown, the witnesses would not dare to observe or witness as to see that what is being done and who is assaulting.

The situation on the day was terrific, the frightened eye-witnesses because of fire, heat, flames try to escape, hence as a matter of fact, it would be natural and normal reaction of the witnesses to try to observe, to see as to what was happening, who threw the stones, bricks etc., by whom slogans were being given. One cannot shut one’s own eyes.

It would be quite natural for the witnesses to first try to see as to what was happening and in that process, obviously to see who were the persons in the violent mob. It is only after knowing what the accused were doing, the witnesses would know to what extent, they were in dangers. The PW are held to have sufficient opportunity to observe the accused and their activities which also has helped them identifying the accused.

44. CITATION OF DEFENCE ON APPRECIATION OF EVIDENCE (Ld. Advocate Shri Kikani:

The defence's citation at **Sr.No.66** was pressed into service to submit that when conduct of eyewitnesses are found unnatural, such eyewitnesses cannot be believed and in such cases the accused are entitled to benefit of doubt. It has been submitted that it has happened in the case on hand that inspite of the fact that the PW witnessed the torching of his family members by the mob, he ran away from the site. Since this conduct is not probable for any human being, the said PW cannot be held to be an eyewitness of the occurrence. Hence, the accused needed to be granted benefit of doubt.

In the humble opinion of this Court the usual tendency of human being is of self protection and the tendency of `flight or fight' meaning thereby in case of extraordinary calamity one would choose to fight out the situation and if he cannot, he would run away which is known as `flight tendency'. Considering the said psychological aspect of human being, the submissions sound to be devoid of any merit and it seems very natural for the PW to have witnessed the occurrence of torching his wife and or children and still the PW ran away

from site instead of saving the family members. Since the conduct of PW is very natural the citation would not be applicable in the case.

45. IDENTITY OF ACCUSED TO BE GENUINE :

In the case, there was every opportunity for the eye-witnesses to see and observe the mob and there was every possibility of their having seen accused in the mob during the long period for which the incident lasted. Moreover it is matter of fact that most of the accused were known to the PW as all the accused barring two or three were residing in same locality. Therefore, the identification by the PW of the relevant accused is found genuine. The facts of the case guide the Court to draw the inference of prior acquaintance as well. The issue of identify before court, inference of prior acquaintance and T.I.P. etc. related to identity of the accused have been dealt with accused wise and PW wise.

46. CITATIONS BY DEFENCE (Ld. Advocate Shri Thakur):

There are in all, 8 judgements cited by L.A. Mr. K.N. Thakur for the defence. Out of these 8 Judgements, the judgements at **Sr.No.2, 3, and 5 to 8** have already been cited by L.A. Mr.Kikani for the defence and that the said have already been dealt with. Now that, the judgements cited at **Sr.No.1** - 2010 SAR (Criminal) 553 Supreme Court in the matter of **Eknath Ganpat Ahir v. State of Maharashtra & Others** and the Judgement cited at **Sr.No.4** - 2010 Cr.L.J. P.665 (SC) in the matter of **Gurmail Singh v. State of Punjab** are

only to be dealt with the same have been dealt with over here one after another.

(a-1) At the judgement of **Sr.No.1**, it is clear that in the facts of the case, the Sessions Court as well as the High Court have given their finding that not even a single eyewitness was able to categorically name the particular accused who had inflicted injuries to the deceased or to any of the injured witnesses and that only vague and omnibus statements were made. Further in the facts of the case, there already existed serious dispute of lands between the parties, many of the accused have sustained serious injuries and there was absolutely no independent evidence whatsoever.

(a-2) In the facts of this case, the witnesses have deposed on specific role of the accused, none of the accused is injured in the dispute, there are only about 57 witnesses who do not include any of the accused and there are 14 witnesses who only include dead accused.

(a-3) This Court has dealt with these witnesses differently as occurrence witnesses and that to decide the involvement of the accused in the crime in specific, the witnesses who name one or another accused have been considered.

(a-4) In view of the foregoing glaring difference between the facts of this case and the facts of the cited judgement, the cited judgement is not applicable. Speaking more specifically, Head Note - 'A' is applicable to the prosecution case where many of the witnesses though named the accused were found unable to give specific details about the fact that which injury

was inflicted on the deceased and it was by which accused. In the facts of the case on hand, this Court humbly but firmly believes that the principle of joint liability would certainly be invoked in the facts of the case. Hence, the independent role is to be viewed differently. In cases like one on the hands appreciation of evidence is to be done treating the joint liability of all the accused where, for act and omission of one while sharing common object with other they culpability of other would be created.

(b-1) At **Sr.No.4** Judgement, para-9 has been emphasized, this is with reference to read the kind of the injury with the kind of the weapon alleged to have been carried by the accused.

(b-2) In the facts of the case, the deceased were physically injured by different weapons and then after they had been burnt by the accused, that being so, it is but natural that some of the superficial injuries cannot be seen, moreover, in most of the cases, the Court has to presume the death of the deceased who are referred by the eyewitnesses to have been given fatal injuries, to have been burnt or to have been killed in front of them.

(b-3) PW 285 has applied his guess work to decide which dead body of unknown person is of whose dead body which is since not an evidence, the postmortem notes of unknown male, female or of unknown dead body for undetermined sex have not been believed to be the dead bodies of the endorsed named by PW-285. PW-285 is undoubtedly expert of medical science, doing P.M. etc. but he is not expert of naming unknown dead

bodies by his guess work. This has been dealt with in the Chapter of P.M.

Suffice it to say here in the facts of the case that the fact highlighted at para-9 of the cited judgement does not exist and that in light of it, this judgement also has no application.

The judgments have not established any defence while reading it with the facts of the case.

47. THE PRACTICE/THEORY ON NEED OF ONE RELIABLE WITNESS AS SUFFICIENT : -

(a) Appreciation of evidence in riot cases presents some peculiar difficulties, primarily it is because of the large number of victims and large number of offenders. The question as to whether there is need of one, two or four witnesses to hold the accused guilty is important which needs to be answered.

The submissions made by the **defence** is to the effect that the judgement in the case of **Masalti** is absolutely binding to the Court and that in view of the said judgement, this Court is required to decide sufficiency of at least four witnesses to book any of the accused in the charged offences. It is further forcefully submitted that since about eight years have already passed to the occurrence, normally, no witness can remember the face of the accused and that considering the same itself, the Court may not hold any accused guilty unless at least four PWs identify him to have been involved in the offences.

(b) In case of **Masalti & Others v. State of U.P.** cited in **AIR 1965 SC 202 (defence citation No.4)**, it has been held that when the Criminal Court has to deal with the evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistence account of the incident.

(c) **AIR 2001 SC 4024** in the matter of **Chandrashekhar Bind and Others v. State of Bihar**, Hon'ble Supreme Court has referred Masalti's case and it was held that "there is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly and that though even the testimony of one single witness if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly, still when the size of an unlawful assembly is quite large and many persons would have witnessed the incident, it would be a prudent exercise to insist on atleast two reliable witnesses to vouchsafe the identification of an accused as a participant in the rioting".

(d) The Judgement of **B.P.Achala Anand v. S.Appi Reddy reported at (2005)3 SCC P.313** wherein Hon'ble Supreme Court was pleased to observe that

> ***"Unusual fact situation, posing issues for resolution is an opportunity for innovation. Law, as administered by Courts, transforms into justice."***

While deciding the case, the Court has to bear into mind the peculiar facts exists in a particular case."

This citation guides the Court to deal with cases of peculiar facts, in innovative way to do complete justice, if so requires.

(e) From the case of **Dansingh**, at **Sr. No. 5** (of 1997) of the defence citation, it is emphasized by the defence that only those members who are identified by at least four eyewitnesses should be punished.

(f) It is useful to draw a picture of the situation on that day. On 28/02/2002, it was a situation of total subversion and erosion of rule of law at Naroda Patiya right from about 9.30 a.m. or so to evening at least upto 08:30 p.m. With the highest respect, it needs to be stated that it is true that in Masalti's case, Dansingh's case etc. the fact situation was not like the case on hand, there were no frequent change in the investigating agency, there was no allegation that the investigating agency has helped a particular community against the another community, that case did not come for its trial after seven years, there was no transfer petition filed in that case before Hon'ble Supreme Court and in that case no need was noticed to constitute special investigating team on the ground that previous investigation was improper and even there was no order for further investigation, which all had happened in this case.

(g) Moreover, if the discussion along with illustrations noted are perused from chapter of C-Summaries Exh.1776/1 to

1776/24, from sting operation chapter - the extra judicial confession made by the three accused for themselves and for their co-accused being tried jointly, and if different illustrations from the chapter of 'previous investigation' are studied well then it is clear that within these seven to eight years of the occurrence many star eyewitnesses had passed away, some of the star eyewitnesses are not found, some have migrated the State, and some of the complaints have not been taken on record. Even this is also not the fact in the case in **Masalti or Dansingh 1997 CR.L.J. (SC) 467 (defence citation Sr. No. 4 and 5)**.

(g-1) In the case of **Masalti**, the principle has been laid down as was submitted by the defence to adopt some mechanics or some device or say theory of the need of more than one, two or three or more witnesses in riot cases.

(g-2) But, even in the cited case of **Masalti**, it has been held at paragraph 14 that ***“No hard and fast rule can be laid down as to how much evidence should be appreciated.”***

(g-3) At paragraph 16, it is observed that it is usual or useful to adopt the test, but it does not say that it must adopt such test.

(g-4) It has also been observed in this paragraph that it is no doubt the quality of evidence that matters and not number of witnesses who give such evidence, but it is sometimes, useful to adopt such device thus, in the said judgement, Hon’ble Supreme Court was pleased to confirm the need of

quality of evidence also and not only to adopt such practice.

(h) The already known principle of appreciation of evidence is quality, not quantity of the witnesses. **Section 134** of the Indian Evidence Act provides that, "*No particular number of witnesses, in any case, be required for proof of any fact.*" The Indian Evidence Act has not provided any section or any Rule which requires a particular number of witnesses to hold the accused guilty in any particular offence. It is therefore clear that even single witness is sufficient to prove any fact if that witness is found reliable and dependable by the Court.

(i) A very notable fact of this case is, since the trial has commenced after about 7 years or so and many PW had opportunity to testify after about 8 years, several prosecution witnesses have died. On account of the negative impact of the incidents viz., the communal riots, many of the PWs, many of the victims, who were nowhere heard and who have even left the city of Ahmedabad with the silence they have adopted and thus, the situation as is prevalent in routine communal riot cases, is not existing in this case that after the spur of moment things get settled itself.

(j) Even in the case of **Masalti v. State of U.P. (AIR 1965 SC 202),** heavily relied upon by the defence - (defence citation No.4) at paragraph 15, Hon'ble Supreme Court was pleased to observe that *"Appreciation of evidence in such a complex case is no doubt a difficult task, but criminal Courts have to do their best in dealing with such cases, and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."*

(k) The emphasis in **Masalti's** case at paragraph 16 is that, sometimes it is useful to adopt test like the one suggested, but this Judgement nowhere says that it is mandatory in every case of communal riot to apply the test of more than one witness or two witnesses or four witnesses.

(l) The benefit of examining many star eyewitnesses is now not available to the Court hence for the occurrence even if in 2002 there were many eyewitnesses today hardly one or may be two are available who have been examined as PW and even some of them have been dropped by the prosecution to avoid repetition.

Considering the above situation, if theory of two PW is practiced it is likely to cause serious prejudice to the prosecution / victims. After eight years it is already difficult for the prosecution to find out the victim and then after if such theory is practiced it would be amounting to adding injustice to the victims of riot. The usual theory of expecting at least one reliable PW is not going to cause any injustice to the accused and it would be very just and proper in the facts of the case.

(m) Considering the discussion above, the general principle of 'quality not quantity' needs to be practiced by the Court which seems to be in larger interest of justice, equity and good conscience.

(n) On perusal of entire Part-2 of the judgement, it is crystal clear that in this case practicing theory of necessity of at least two PW to bring home guilt of the accused would be total

miscarriage of justice and travesty of trial which was conducted after about seven to eight years.

(o) In the judgement of defence citation No. 1 **2012 CR.L.R 1 SC,** the principle propounded is to do appreciation of evidence equally unless the statute provides for any another mode to appreciate. The statute has not provided any other modes. Most importantly, because of dropping, death, unavailability, migration of the eyewitnesses for some of the accused in fact no PW was available though was available at the stage of investigation and for some of the accused now none is available and for some of the accused, only one or two PW are now available.

(p) In these circumstances it is not prudent and proper to practice the need of two PW to involve the accused as at times even two are also not available to depose though in fact there were many witnesses, hence it would be in accordance with, the discussed citations, principles of appreciation of evidence, principle of justice, equity and proprietary to practice the theory of need of one reliable PW to bring home guilt of the accused. Not adopting the policy would cause serious prejudice to the victims and it is also essential to strike the balance.

(q) The judgement relied upon by the defence and produced at **Sr.No.1** is the judgement in the matter of **Kailash Gour and Others 2012 CR.L.R. 1 Supreme Court.** This needs a little background, which is reflected in Para-2 of the judgement itself. This judgement has a reference in the judgement published at (2008) 9 SCC 204 (Coram: Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice H.S. Bedi, JJ) This judgement

was in the matter of Harendra Sarkar and Kailash Gour and others both appellants in two different Criminal Appeals preferred before Hon'ble The Supreme Court of India. In the mentioned judgement Hon'ble The Bench of the Supreme Court had different opinions, hence, the matter was referred to the Larger Bench. Thus, the matter was heard by Larger Bench (Coram: Hon'ble Mr. Justice Dalvir Bhandari, Hon'ble Mr. Justice K.S. Thakur and Hon'ble Mr. Justice Dipak Mishra, JJJ). If the cited judgement is read in its true perspective, then, it is very clear that it is held that the rules of evidence and the standards of evaluation of evidence should be same in every case. Putting the same in the words of the Hon'ble Supreme Court of India at paragraph-29 it reads that, "*In short there can only be one set of rule and standard when it comes to trial and judgement in criminal cases unless the statute provides for anything specially applicable to a particular case or class of cases.*" It is also held in the very same paragraph that *the rules of evidence and the standard by which the same has to be evaluated also cannot be different in cases depending upon whether the case has any communal overtones or in an ordinary crime for passion, gain or avarice. ... ...* The standards that are known to criminal jurisprudence regardless whether the crime is committed in the course of communal disturbances or otherwise.

This citation is applicable to the case which guides that the usual principle of 'quality not quantity' can very well be practiced.

(r) The defence citation at **Sr.No.2** has also propounded similar principle.

(r-1) In the opinion of this Court, the cited judgement does emphasize on well cherished principles of Presumption of Innocence, Proof beyond reasonable doubt etc., and Inept handling of the investigation, inadequate investigation or inefficient investigation, are no exceptions to the said principles. It is also held simultaneously and rather principally that the rules of evidence shall not have two tones. It shall have the uniform tone given to it by the statute and in any case, if the statute would have so desired to give another scale to a particular kind of cases, it would have so provided. It is true that the cited judgement does re-emphasize the cardinal principles of criminal justice delivery system of principles of Presumption of Innocence and Proof beyond reasonable doubt and even quality not quantity theory. But, at the same time, it also gives an echo that the rules of evidence and standard to evaluate and/or to appreciate, shall remain same in every case whether it is case of ordinary murder or a case of communal riot.

(r-2) Upon application of this theory, it becomes amply clear that since Section 134 of Indian Evidence Act does not provide any limitation on requirement of number of witnesses to prove any fact now. In no case, the Court shall apply any such limitation. In the above light of discussion, it is now very clear that the Court can hold one witness to be sufficient, if the Court finds that witness is reliable who can give account of the occurrence in a satisfactory manner to hold it to have been proved beyond reasonable doubt. Whether this is a case of communal riot or not should not have any effect on holding sufficiency of the prosecution witness to hold the accused

guilty.

(s) The Judgement reported at (2012) 1 SCC 10 Head Note – I :

At this juncture, the judgement produced by Learned P.P. at **Sr.No.30** of the citation titled also needs reproduction more particularly Head Note-I of it, which also guides that a solitary eyewitness can be held competent to prove the guilt of the accused. As held, it is the quality of evidence and not quantity of evidence, which is important.

> "*Head Note-1 :- Criminal Trial - Witnesses - Sole/Solitary witness - Testimony - Reliability - Held, there is no legal impediment in convicting a person on testimony of sole witness - Evidence has to be weighed and not counted - Test is whether evidence has a ring of truth, is cogent, credible and trustworthy - Emphasis is on weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses - Thus, it is open to competent court to rely on a solitary witness and record conviction - Conversely, it may acquit accused in spite of testimony of several witnesses if it is not satisfied about quality of evidence - On facts held, deposition of PW 16 (SPO) who was privy to entire occurrence right from abduction to elimination of deceased by appellant police officials can be relied upon to sustain conviction.*"

(t) In light of the foregoing discussion based on different citations relied upon, this Court answers the entire discussion as under :

(t-1) If the PW is found reliable and dependable, the Court shall consider even solitary PW sufficient to hold the accused guilty of the charged offences.

(t-2) Since the case has a voluminous record and since this trial is after consolidation of eight Sessions Cases, arising from about 120 complaints, several witnesses had to be dropped by the prosecution to avoid repetition and to avoid situation of very lengthy trial and to secure speedy justice for all concerned if theory of quality not quantity for sufficiency of the PW is practiced then, the same would be in larger interest of justice.

(t-3) It is however, kept in the mind that this Court is to practice the theory of only one witness to hold any accused guilty, but the Court has practiced the theory of having one reliable and completely dependable witness.

(u) Justification for theory from record :

(u-1) To put a rough estimate it may be mentioned that, as the record reveals about 29 witnesses had died before the matter has reached its trial, about 18 witnesses were not found in spite of diligent efforts. Since these witnesses were not examined on account of their death and they being not found, it is very typical circumstance, the court did not have benefit of their first hand experience and version from personal knowledge, which needs consideration as even after this loss of witnesses to the prosecution the theory of need of two, three or four witnesses if would be practiced, then that would be

prejudicing the interest of prosecution and of victim and ultimately of justice which cannot be permitted.

(u-2) However, noting down the above data, it seems that inspite of the above position of theory of two PW would be kept then that would be over lenient view which is also not prudent and just.

(u-3) About 374 (Exh.2566 the explaining purshis of Ld. Special P.P.) witnesses were needed to be dropped by the prosecution for different reasons, including to avoid repetition of the evidence. The charge-sheet witnesses were 748, out of them, 327 witnesses were examined by the prosecution.

(u-4) At Chapter-5 of this Part where R & P of C-Summaries has been discussed (Ref.EXH.1776/1 to 1776/24), it has been held fro this record as to why and how much it is important in this case to decide the sufficiency of one reliable PW to bring home guilt, of the accused.

(u-5) This Court has therefore, found it appropriate to practice the theory of sufficiency of one reliable and dependable witness.

48. Defence citations for general principles :

At this juncture, it is fitting to note that the **defence citation at Sr.No.3, 4, 8, 11, 23, 29, 35, 47, 49 and 75** which are all on the principles of, in case of two views, the Court is required to lean at the view which is in the interest of the accused, presumption of innocence being continuously

marching until the accused is held guilty, inability to prove the defence version cannot be given any importance, need of proof beyond reasonable doubt, the situation when prosecution puts up its case in two sets etc., are all based on cardinal principles of criminal justice delivery system, which are all obviously binding to this Court. This Court humbly believes that the above principles are to be applied in the facts of each case and that the facts are master key of any case. This Court has also applied the principles in this case wherever permissible by facts of the cases.

49. Citation of Defence on investigation: -

(a) The defence has produced on record at defence citation **Sr.No.78**, a judgement of Lahore High Court, it was submitted that since the bona fides of the investigation has been successfully questioned, the said investigation and evidence collected during the investigation should be looked with suspicion.

(b) In the opinion of this Court, it is no doubt suspicious record but the defence has nowhere indicated nor the Court found that because of the record any prejudice has been caused to the defence. The benefit can only be availed of by the victims qua their credibility. The SIT record has been treated as base even by learned Public Prosecutor. It is however needs to be put up on record that even it has many limitation, mechanical approach etc. but then, it is not bias.

50. Submission on false involvement :

Though the case arose out of communal violence and though there is substance in the contention of Learned Advocate for the accused that in order to implicate anyone falsely, the witnesses need not have enmity with such accused, but there may be a general tendency to implicate falsely to settle score. But, in this case this Court opines that the manner in which the evidence has been given against the accused and considering the entire evidence of supporting eyewitnesses, there is no case of false implication having been proved or even reasonable doubt of false involvement is also not on record.

51. Accused with weapons at site :

The evidence shows that most of the accused were armed with a deadly weapon and are guilty of rioting being armed with a deadly weapon. The weapon is not actually recovered from them, but it is immaterial in the circumstances. Considering their delayed arrest, defects in investigation and sluggish, inept and inefficient investigation by previous investigators, such lacuna cannot be considered at all to give benefit to the accused. Proof of their being with weapon at the particular site, at the particular time, etc. by reliable PW speaks volumes about their undoubted involvement in the crime.

52. Submission on free fight :

(a) The much emphasized argument by the defence is that it is a case of free fight, but this Court believes that there is no merit in the said submission, firstly for the reason that there is apparent and admitted tremendous loss of property of minority

community which is valued in crores of rupees.

The destroying and damaging activities against Muslims was carried by the members of Hindu mob only.

The admissions of the some of the Muslim PW of cross stone-pelting is apparently for their self-defence, which was by a very few members of the Muslims who were all surrounded by Hindu assailants. About 96 muslims died and about 125 muslims were injured in the occurrence.

(b) The free fight is absolutely different from self-defence or it can, at the most, be said to be adopting fight attitude and not fright for some time by Muslims and then adopted fright. No damage is reported to any dwelling house of other communities or other religious places. As against that, death of 96 Muslims and injuries to 125 Muslims have been reported. It cannot be free fight. This defence can never be truth in the facts and circumstances of the case.

(c) Learned advocate Mr.R.N.Kikani while advancing the submissions of the parties, to have indulged in free fight has relied upon defence citation Sr.No.**78** wherein it is held that in serious cases of riots involving difficult questions of law, both the parties indulging in free fight should be issued with challan. It is humbly opined that, as discussed herein above, neither the Court finds it to be case of free fight nor any of the investigators found the same. Hence, the submission does not find favour of this Court being far from reality.

(d) Defence citation at Sr.No.**78** was based on the free fight

between both the parties and it is related to the duty of the police to challan both the sides in case of free fight. In the instant case, the free fight theory advanced by the defence has held to be not acceptable in the facts and circumstances of the case. Even no cross is done on this aspect. The first I.O. though, stepped into the witness box, he has not been confronted on this aspect. Hence, the citation qua the free fight is not applicable to the case on hand. However, it will be examined qua applicability of Section 149.

53. Non-production of C.D. of Statement by SIT :

(a) It is submitted that since the SIT has not produced the CD of the statements, the investigation to that extent is faulty and hence it should not be acted upon.

(b) When the original statements are tagged along with charge-sheet, it cannot be said that for want of production of video cassette it would amount to lapse of prosecution. There is absolutely nothing fishy for non-production of the VCD by SIT wherein shooting of recording of the statements of the PW was done. During the deposition it has been emerged that in fact this shooting was done while reading over the statement to the PW. PW-327 the I.O. of SIT has not been crossed on the aspect.

(c) In light of the fact that there is hardly any grievance of the PW about the official act done by the team of the SIT, the presumption under Indian Evidence Act of all official Acts to have been performed regularly and properly can be invoked. It can be made applicable to the case on hand since no reasonable doubt is created against investigation of the SIT.

54. Seating arrangement of the accused :

It may be noted here that the accused were never instructed to sit in row according to their serial number during the trial. They were permitted to sit at any place they like in the area meant for the accused to sit. No particular place was suggested to the particular accused.

55. Occurrence of at train :

The said S-6 railway compartment was set on fire on 27/02/2002 which took toll of many lives and injured numerous. Spread of this news that the Muslims burnt the Kar Sevaks had resulted into feeling of anger, revenge, hatred, disliking, call for murders for more murders were on and thus, communal riots spread in entire Gujarat.

Even learned advocate Mr. Kikani, for defence puts up his submissions basing up this hard reality. It is different that he uses this hard reality to submit that this was the prime cause or the origin of the occurrence in question. This Court is of the opinion that in fact the hard reality, which is now undisputed, has the direct link with the common object the accused had nurtured in their minds, which was certainly to cause damage and loss to the properties and lives of Muslims, which can safely be inferred by the Court in the fact situation of this case.

56. Members of the Mob :-

(a) When confronted with the figure of the members of the

mob, the PW have accepted that they are not sure about the figure. It must be understood that it can merely be a guess work. On account of illiteracy so many persons or uncountable persons was the feeling but any suggestion of big number was found by such PW to be their estimated figure.

(b) Noting the magnitude of the offence, time span of at least 11 to 12 hours in which the series of occurrences spread over it can safely be inferred that for the victims and their relatives who lost all their properties and lives of their near and dear ones in front of their eyes, this was the most horrifying, terrorizing and terribly frightening experience which must be the worst hours of their lives which can never be forgotten by them.

(c) The figure of the members of the rioters in the mob is not based on counting, but it is guess. The contradiction does not challenge credence of the PWs, it is absolutely insignificant, the PW are worthy of credence. their improvement is not such which doubts their veracity.

57. General hospital, Fire brigade :-

It is matter of record that the record of hospitals, fire brigade, etc. does not perfectly tallying with the oral evidence. The governmental agencies like the police, the entire State machinery including general hospitals, fire brigades, executive magistrate etc. were tremendously busy in maintenance of law and order situation and that the riot thereafter also had continued for about 45 days hence all of them had unprecedented workloads at their respective offices. In such

unusual workload the maintenance of record may not be in priority. This court, therefore, believes that reliable oral evidence of the victims should be taken as base of the case.

58. Rapes and Gang Rapes :-

(a) It would be absolutely incorrect to believe that gang rapes have not taken place. The extra judicial confession of A-22 and testimonies of many PW including of PW 205 can safely be relied upon which proves gang rape and rapes to have taken place on that day. In the separate chapter on incidents of that day, such occurrences have been discussed and decided.

59. Language of deposition :

(a) Almost all prosecution witnesses who belonged to the group of victims, injured PW or a relative of deceased victim are illiterate and/or are only knowing to sign and some are knowing formal reading. Most of them are doing thumb impression. In all, about 126 such PWs, out of the total victim PW, spoke in Hindi during their testimony. Only about 44 such PWs spoke in Gujarati language.

(b) The injured victim or the relatives of the deceased victim were mostly doing miscellaneous labour work and were daily wage earner. Some of them were doing business on a very small scale and some of them were hawkers as well. Those who were housewives were very poor in their verbal expression, some of them were feeling shy, some of them came in Parda in the Court, they were apparently noticed to have felt very hesitant.

60. Victims of the trial :

(a) Many women were also self-employed and were doing labour work in factories or at their own houses. Except one of the victim, who was working in AMTS, none was employed in Government or Semi-Government sector. One who was traffic controller in S.T. was knowing Gujarati quite well.

(b) It is obvious that the mother while deposing, would remember her child died in front of her eyes. All those loving gestures of the child would crash into her consciousness. Such testimony is bound to be truthful account of the eyewitness.

(c) The appreciation suggested by the defence of the testimonies of the PW wherein ultimately the PW has been labelled to be liar and not a genuine witness or is labelled as tutored witness, are all opined by this Court to be false and full of mis-perception. Acceptance of the same would be a mockery of justice which results into proving that the trial was travesty of justice.

(d) Noting the estranged relationship between the two communities, the occurrence of burning the kar sevaks alive would prompt the aggressors not to leave any loose ends to do away the Muslims. Since the aggressors were the majority community it can safely be inferred that the minority community was the victim of the crime.

(e) The running away of helpless Muslims and assembling to save themselves from the assault at U-shaped place below the

water tank was scoring advantageous point in favour of the aggressor as they get more Muslims in number at one place.

(f) The hyper technical approach, as is suggested by the defence, of treating all those PW as liars who are not implicating the accused in 2002, would defeat the ends of justice and would have disastrous effect. This Court is aware that the previous investigation was not upto the mark, and was rather not reliable.

(g) Poor economic condition, disturbed emotion and lack of knowledge of Gujarati language must be put together to appreciate the evidence of the victims in just, fair and equitable manner.

(h) In the humble opinion of this Court, the submissions of the defence that killing of Kar Sevaks in Sabarmati express on 27/02/2002, is a strong mitigating circumstance, is not worthy to be accepted as there cannot be justification of commission of crime for doing another crime, as nobody can take law in one's own hand. We live in the society where rule of law very much survives. The accused should have waited for the law to take its own course and they ought not to have become Judges for the cause of Kar Sevaks.

(i) A man like the accused in this case, who possesses or uses deadly weapons must know that the blow is so imminently dangerous that it must, in all probability, cause death and the injury intended to be inflicted would be sufficient in the ordinary course of nature to cause death.

61. Testimony before another Court :

(a) Learned advocate Mr. Kikani has vehemently submitted that the statements before the I.O. of Naroda Gaam case and the depositions of Shri Gaurav Prajapati and others before the Court of learned brother Judge, needs to be accepted as correct and basing upon that the defence of alibi of A-37 should be believed.

(b) In the opinion of this Court, such statements and/or such depositions before another Court cannot be accepted as a whole truth as desired by learned advocate Mr.Kikani for defence, for the reason that this Court is deprived from noting the demeanour of the witness and that even the prosecution did not have an opportunity to cross-examine the witness. Hence, the same cannot be termed to be relevant.

(c) Over and above this, the testimonies before the court of learned brother Judge is also held not to be relevant, for the reason, that as provided in Section 33 of Indian Evidence Act, the requisites for making the testimonies relevant, do not stand satisfied and in these circumstances, it is not safe to accept correctness of the said statements or the testimonies before another court. Had the defence been confident about the correctness and the truth of those testimonies, the defence ought to have examined the said persons as the witnesses of defence. But the defence has not so chosen, which in the opinion of this Court, is self speaking.

62. Defence of alibi :

Some of the accused like A-37 has raised the defence of alibi, but after raising the said defence, the burden has not been discharged by putting on record any trustworthy evidence. It is settled position of law that the fact of plea of alibi being in special knowledge of the accused, who raised the said defence has also to discharge the burden to prove the same.

As has been held by the Hon'ble Supreme Court in the matter of ***Jitendra Kumar v. State of Haryana with Sunil Kumar and Another v. State of Haryana reported at : (2012) 6 SCC; 204***, it is held at headnote 'I' and 'J' that the burden of establishing the plea of alibi lay upon the accused and if the accused failed to bring on record any such evidence which would, even by reasonably probability, establish his plea of alibi. The plea of alibi in fact, is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence. It is held herein that, in such circumstances, plea of alibi can be held to have not been established and the accused needs to be held to have failed to discharge the burden u/s. 11 of the Evidence Act.

63. Defective investigation :

(a) It is a settled position of law that defective investigation, that too a deliberate defective investigation or deliberately kept loopholes, are no ground for acquittal. In this case, initial investigation has been found very dis-satisfactory and unreliable. The said investigation has been held to be not dependable. It is true that at times faulty investigation or defect does help the defence and can even secure benefit of

doubt but, that is not rule.

(b) In the opinion of this Court, the accused are entitled to benefit of doubt only in the condition when, in case of defective investigation, the defects or lacunae left or exists in the investigation prejudices the accused in any manner.

(c) Learned advocate for the defence picked up a sentence from the defence citation at **Sr.No.1** in the matter of **Kailash Gour** and has submitted that as in paragraph-29 of the cited judgement No.1 it is written that "*the benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution*". It is more than clear that the word `such faulty' is suggestive of the peculiar situation in the facts of cited judgement and this is not the principle propounded by Hon'ble The Supreme Court.

(d) This sentence has to be read in reference with the faults in the investigation in the cited case wherein the FIR was registered much later when the investigation and the evidence on record has showed that the investigating agency had, in fact, no clue about the perpetrators of the crime at the time when they reached on the spot.

(e) In the case on hand, the complainant is an eyewitness of the entire occurrence who himself is a police officer and who is able to give first hand account of the situation prevalent at the site on the date of the occurrence. Many senior police officers were also present at the site.

(f) Having discussed this, it is now crystal clear that the

faulty investigation, in every case, as a rule or as a settled position of law, does not help the accused. If the interpretation suggested by the defence is accepted, it shall have to be termed as perverted and distorted interpretation, which hence cannot be done.

64. Objects of the mobs :

(a) From the facts and circumstances of the case, it is too clear that the object of the mobs were to show criminal force by possessing the weapons and if necessary actual use of force by the weapons or otherwise to damage, destroy, ransack and rob the properties of Muslims, to kill Muslims, to revenge the killing of Kar Sevaks at Godhra and in light of the said background, the possession of weapons on the date of offence can undoubtedly be inferred to attack Muslims, if chance is available.

(b) The defence citation **No.49** has no application in the facts of the case for the reason that from the serological report in the cited case it was evident that no blood stains were found on weapons of the offence and the benefit of doubt was given on the said count. But in the instant case, the investigating agency has firstly not recovered the weapons from the accused on time and that at the belated stage such recovery or discovery becomes of very little use. In such cases it is but clear that the accused will keep the weapons in clean condition and will not keep the weapons with blood stains on it. The importance of the recovery and discovery can only be better in a case when the same is done on the spot. As has already been discussed in great length, the previous investigation in the case was of

doubtful nature, the facts of this case and cited case is different hence this judgement does not help the defence.

65. Conduct of the PW :

In the defence citation at **Sr.No.67**, Hon'ble Court has observed that the conduct of the witnesses in the cited case was not natural. But in the case on hand, it is found to be quite natural. In the cited case plea of alibi raised by the accused was found plausible, which this Court did not find in the fact of the case on hand. Considering the difference between the facts, the cited judgement cannot be applied to the case on hand.

66. Natural Presence :-

In the cited judgement at **Sr.No.69**, the presence of the eyewitness at the place of occurrence was held to be doubtful. But in the case on hand, the presence of the PWs at the place of occurrence is too natural because the victims were residing in the very same Muslim Chawl along with their families. It is obvious that there is vast difference between the facts of cited case and this case. Hence, the cited judgement cannot be held to be applicable to the present case.

67. Citation for intention of the accused :

In the fact of the cited judgement of **defence citation at Sr.No.70**, inference was not able to be drawn about the common intention of the co-accused to kill the deceased. But in the instant case, the circumstances are so speaking followed by

the acts and omissions by the accused and execution by the conspirators is such which is confirming and no doubt is left out about the intention of the accused to be common as their behaviour was absolutely common along with the common objects they had, the entire plan was prosecuted. Hence the cited judgement does not have any application.

68. Fight or flight response :

The defence has submitted that it is not possible that when the family member is attacked another family member would run away.

This Court opines that it cannot be forgotten that in the time of emergency the natural instinct is always to save oneself and each such person thinks that if he is saved he can save his family member. The tense and disturbed situation of riot must have generated tremendous fear in the mind of every victim and that unless forensic scientist, behavioural scientist deals with the issue and treat the mental state or mental health of the victim, it is very difficult for the victim to narrate and state every thing with great details. Passage of time certainly is accepted remedy in many cases, hence the SIT constituted after about six years can also be held to be in such period when it can reasonably be expected that the victims must have gained reasonable normalcy if not absolute.

69. Hesitation to involve :

As submitted, since in the year, 2002 the accused were not involved by the PW, it cannot be believed that in the year,

2007, the accused have been correctly involved.

It is natural that the victim would have been tremendously afraid spelling out the names of the accused as the victim has witnessed the power of the accused on the date of the incident. The victim would naturally not take any risk of their lives and lives of their families. Moreover, the police not recording names of the accused is also equally possible.

70. Credibility of PW :

As emerged from deposition the situation of the riot on the day if put up in short then, there were slogan shouting of 'kill the Miyas', 'not a single Muslim should survive', 'Jai Shri Ram', 'Maaro - kill', 'Kaapo – slaughter Miyas', 'burn Miyas, rob Miyas' etc. all around. There were miscreants all around with deadly weapons, there was killing, slaughtering and burning the persons alive was ongoing. The frequency of the incidents and the speed of happening must have been so high that before the victim grasp the detail of one incident another slaughtering might have taken place, victim takes time to accept the series of incidents by the rioter which the victim has never imagined, in life. This all must have frightened the PW. Because of fear his concentration increased. Whatever one saw or whatever one noticed, must have been recorded in one's mind but what was happening nearby that situation may go unnoticed. In nutshell the situation was that of war where the attack was by majority and victim were poor persons of the minority community. Reply for every details may not be with PW and still his description of the occurrence and identification of the accused are most credible.

It is difficult for the eyewitnesses to put everything in words therefore the policy is adopted that the spirit of the version of the witness also should be seen and whatever voluntarily the victim was speaking during his cross-examination, has all been written in his deposition.

71. PW while deposing :

This Court has observed that during the deposition many of the witnesses were finding it very difficult to control rolling down their tears on their cheeks. They were eager to show their burnt limbs, their injured limbs and explain their losses to the Court. Many of the parent witnesses were unable to describe about the death of their children in the riot, they became so emotional that very often needed to be consoled and offered a glass of water to complete their deposition. Their pains, agonies, anxiety, effects of shock and trauma were very much visible and noticeable. Even on the date of the deposition they were noticed to have been very much afraid. They were frequently assured about their security, but when they used to go to identify the accused, it was noticed that many of the witnesses have avoided to identify the accused whom they were knowing very well. Atleast two to three PWs were so much disturbed that their physical health was affected and ambulance had to be called to take them to the hospital.

72. Fear, Psychological trauma and its impact :

(a) The overall evidence gives an impression to this Court that somehow the witnesses at the stage of the investigation,

other than the investigation by the SIT, have not felt assured of their safety and security. Having no trust in the society and the system of administration of justice, they probably thought that their interest lie in avoiding confrontation. The silence, withdrawal or the attitude of these witnesses is a matter which may be of interest to psychologist and sociologist. However the opinion of some psychologists about victim of such crime has been reproduced which might be the state of mind of the victims. It is opined that the victims, if were extremely frightened than that is also one more cause why the truth did not come out in the previous investigation which is over and above lack of desire of the previous investigator to allow the whole truth to come on surface.

(b) It is well known that psychological trauma impairs the ability or willingness of crime victims to cooperate with the Criminal Justice System. Victims must be treated better by the Criminal Justice System. Crime related fear makes the victim reluctant to report crimes to police or those who are too terrified are even afraid to testify effectively. Before recording the statement for investigation of the crime, crime related mental health problems of the victims should have been dealt with by grief counseling. There has to be victim assistance personnel and professionally sound persons who can be useful in dealing with the avoidance behaviour. This has never been addressed by the previous investigators.

(c) The victims of such a terrorizing crime are normally shocked, surprised and terrified about what has happened to them. “Fight or flight” responses are common in dangerous situations for anyone.

(d) The criminal victimization also leads to many physical disorders coupled with mental traumas. At times, the victims experience problems in their relationship with family and friends. Mental health counseling can only bring normalcy in crime victims. It is admitted position that the mental health issues of the victims were not at all addressed.

(e) Criminal Justice System, in such situation, is to be more victim friendly and should treat the victims as human beings and not as evidence for this side or that side. Victim of such crime have difficulty in describing what happened to them. The re-experiencing of the ghastly crime, avoidance and hyper arousal are seen as common feature in victims of such crimes. Hence, at times, the sorbid tales they tell, lacks chronological cohesion. The victim of such crime usually feel very unsafe while persistent investigation, media attention and visits of different persons overshadow the necessary grieving process.

(f) The victim faces fears of many kinds. Fear of violence, fear of perpetrator, fear of memories etc. are main among others. Victim always finds it difficult to organize his thoughts, his memories during the mourning period hence the statements recorded during that period is to be considered keeping this in the mind. There has to be healing or rehabilitation programmes systematically arranged by professional persons for the victims to bring them back to normalcy.

This Court is of the opinion that this psychological aspect and the result of such crimes which is traumatizing victim is

very important factor. It is clear that none of the previous investigators has taken any care for the victims of the crime all of which was necessary for effective investigation of crime to unearth the modus, the preparation, the conspiracy, the perpetrators etc.

(g) It can safely be inferred that normally the mourning period for most of the victims must have been over when SIT took over the further investigation of crime after about six years of the crime. Therefore also, the statements before SIT only should be considered except for the part which does not inspire confidence of the court.

(h) There cannot be any universal rule that every victim would be influenced by fear, but it all depends upon one's psychological and surrounding circumstances. Some may be afraid of one situation, while another may not be.

(i) The above discussion is mainly aimed to highlight the fact that the possibility of many prosecution witnesses who have not named the accused in the year 2002, can be on account of fear and that some of the PWs have even advanced this reason in their voluntary version before the Court. Be that as it may be, but the fact remains that this psychological and sociological impact of fear can be and may be one of the reasons for not reporting to police the name of the accused in case of many of the witnesses. Some such PWs have fairly accepted that in 2002 they have not stated the name of the accused, certain fact etc.

(j) It also cannot go out of mind that numerous PWs have

stated that even though they have stated, the police has not written as was stated by them.

In the opinion of this Court, it is also equally possible. The reason may be either but the record of the previous investigation is doubtful, is the common finding.

(k) It was submitted that for the PW, fear is a factor which would not allow a person to notice everything and one would only think to save oneself. The paragraphs mentioned below are self explaining.

(l) In view of psychologist - *" On the contrary, fear generally has a large emotional factor and as a result, the attention is sharpened, the mental faculties are concentrated and better memory on material points should result. Intense feeling of any kind is apt to key up the powers of the brain and sharpen perception. When we feel a thing strongly, we are sure to retain the recollection of it. It is more firmly impressed upon us than the humdrum affairs of our ordinary life." (Psychology and the Law by Dwight G. Mccarty, 1960, Page 198.)*

(m) G.F. Arnold in his Book titled as "Psychology of legal evidence", has considered the question of effect of fear on memory who states that, *"There is a mistaken impression that fear prevents attention to what is going on and therefore, hinders memory. It is argued that, the narrative or an identification is not reliable because the witness was frightened at the time and the witness could not have noticed or recollected what was seen. It is well, therefore, to state that usually a person under the influence of fear observes better*

and remembers clearly.”

(n) “Fear, says Darwin, *‘is often preceded by astonishment, and is so far akin to it that both lead to the sense of sight and hearing being instantly aroused. It lends us to attend minutely to everything around us because we are then specially interested in them as they are likely to intimately concern us.”* - Quoted from Wigmore’s ‘principles of judicial proof’ (published by Boston Little, Brown & Co. 1913)

(o) The above abstracts guide that just because the PWs were frightened, it would not be proper to disbelieve them on the ground that because of fear, they cannot remember anything and all that they deposed is imaginary. It is different that at times they would keep the information of crime close to their chest and would not trust anyone to share which is due to fear.

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CHAPTER-II : GLIMPSES OF THE SITE VISIT BY THE COURT AND THE MAPS OF THE SITE OF OFFENCE, THE VCD PREPARED OF THE SITE OF OFFENCE ON 11/03/2002 BY I.O. NO.2

(A) ON-SITE VISIT :

On account of frequent requests by all the parties of the litigation, to enable the Court to have an overall idea about the present position of the site of the offence, this Court has visited the site of offence between 11:30 a.m. to 06:30 p.m. on 30/01/2012, upon completion of the trial. The main glimpses of

the report placed on record in Gujarati is as under :-

(1) This Court has passed a Suo-Moto Order below Exh.2537 to visit the site of the offence.

(2) The report produced by D.I.L.R. has been taken on record as Annexure – II herein.

(3) The Police Constable, Mr. Prakash Ghanshyambhai Buckle No. 5527 of Naroda Police Station was assigned the job by the local police station to show different streets (chalis) to the Court as he is, as informed, is fully acquainted with the Naroda Patiya area and more particularly Muslim streets (chawls). Even the I.O. viz. PW-327 of SIT was also present at the site. It is clarified here that all the different chawls and sites are shown by the said police official and by Shri V.V.Chaudhary, the Investigating Officer, SIT, at present D.C.P., in presence of representative of all the parties who have accompanied the Court throughout the day.

(4) It also needs to be noted that the police photographer, police videographer and officials from D.I.L.R. were also present at the site and have accompanied the Court along-with the staff members of the Court.

(5) During the entire site visit, certain observations of the Court needs to be noted. The chawls known as Hukamsingh -Ni-Chali, Dilip-ni-Chali, Pandit-Ni-Chali, Chetandas-Ni-Chali, Kumbhaji-Ni-Chali, Imambibi-Ni-Chali and Badarsingh-Ni-Chali etc. are situated in the frontal part adjoining to the main road. Then nine lanes of Hussain Nagar, Jawan Nagar Khada,

thereafter four lanes of Jawan Nagar/Jawahar Nagar are all situated. These all Muslim chawls are situated opposite Nurani Masjid.

The chalis which are behind Nurani Masjid, are Kashiram-mama-Ni-Chali, Jikar Hasan-Ni-Chali, Masjid-Ni-Chali, Pandit-Ni-Chal, Khemchand-Ni-Chali, Sundarlal-Ni-Chali etc.

(a) All the above mentioned chawls are having certain common features. They are having very congested construction, unplanned construction, uneven construction, houses of low-ceiling, rare houses of one-storied or two storied houses, houses with terraces have mostly cement-net surrounding the terraces or at-least on one or two sides.

(b) Some houses with two exit-entry both having openings in different chawls, most of the houses with roof-top, with narrow ins and outs, small dwelling houses, internal roads to go in one chawl from another chawl, dwelling houses with very little facilities on both the sides of chawls, zig-zag internal roads, dwelling houses are situated one after the another without much margin or space in between the locality which all are mainly of Muslim families, no demarcation to be said to be boundary of a particular chawl, mostly small houses with no balcony, thickly populated area, some of the chawls have hardly eight to ten houses and in some cases even less than that, names of the chawls have changed when the owner is changed.

(c) It is particularly noted that the six chalis viz. Chetandas-Ni-Chali, Dilip-Ni-Chali, Hukamsingh-Ni-Chali, Badarsingh-Ni-Chali, Imambibi-Ni-Chali, Kumbhaji-Ni-Chali and possibly some more chalis are very near to each other and the structure of these chalis are strange as it is seen that the chalis are not one after another, but the houses are situated randomly. In one lane, some houses of X-Chawl are built-up but after two-three lanes of another chawl, abruptly some of the houses of this chawl would come. It is not systematically structured or arranged.

(d) During the whole visit, it is specifically observed by the Court that there is no indication or earmarking of any chawl, street, or gali. Therefore the Court, upon its observation being made during the visit, considers that there is no better narration except the above to narrate the location of the areas consisting of these type of chalis and this is the best way to describe the narration of all chawls because it is just impossible to even describe or depict the locations of the chawls in any manner which are having such type of situation.

(e) The Chetandas-Ni-Chali and Dilip-Ni-Chali are situated facing each other. The entrance is known as Chetandas-Nu-Naku. Inside the road, in the first row on the right hand side, there is Chetandas-ni-Chali and on the left hand side, there is Hukamsingh-ni Chali. Some of the houses of Chetandas-Ni-Chali, Dilip-Ni-Chali, Pandit-Ni-Chali and Hukamsingh-Ni-Chali are facing the main road or say National Highway. Other chawls like Imambibi-Ni-

Chali, Kumbhaji-Ni-Chali, Badarsingh-Ni-Chali and may be one or two more chawls are situated in the frontal area from the main road. Roughly speaking, about four lines in the beginning have about seven or may be eight chawls.

On the main road, there is a cabin known as 'Bharat Cotton Works / Krishna Medical and Provisions Store' and 'Pandit Pan Parlour' (on the date of visit of the Court) etc. Some parts of the houses on this main road and internal main road are mostly terminated into shops of different commodities, which are all small scale business. It is learnt that this place is also known as 'Hukamsingh-Nu-Naku'.

(f) The paragraph (5.a) to (5.e) is the description commonly applicable to all the areas mentioned at paragraph (5).

(6) The areas visited during the site visit including the above mentioned chawls are as under, which have some special features other than what have been noted as common feature at above, which have been noted hereunder.

(a) In the Hussain Nagar Gali No.2, it is observed that there is one Madressa situated in this lane.

(b) In the Hussain Nagar Gali No.4, there is Pinjara's House. To enter this house, there is a staircase which begins from iron gate. This house is having one room along with toilet, bathroom at the ground floor with the second floor and terrace etc. Besides this house, there is house of Umardin Pinjara as well. (**Pinjara’s** house and Umardin’s House were shelter **place** for numerous Muslims on the

date.)

(c) In the Hussain Nagar Gali No.9, there is a public toilet or **Municipal** Lavatory on the road, which is locked at the time of visit and it is looking in an unused condition.

(7) After completion of nine Streets of Hussain Nagar, there is a very big Maidan wherein, in-between there is a pit which is known as **Jawan Nagar-No-Khado**. This Khada can be seen from the terraces of Jawan Nagar. While going inside the Khada, it can be experienced that this Khada has many up-down slops. It is a very large ground wherein wastes are being thrown as it seemed on the day. In the Khada, there is nothing but only heaps of wastage and rubbish thrown by nearer residents and the unattended plants, which are self grown at the place of Khada. On seeing the view by standing at the Centre of Jawan Nagar's Khado, it can also be seen that on the opposite side of Jawan Nagar Big Pitfall, there is a wall behind which the construction of residential complex is on-going and on other side of Jawan Nagar's Pit Fall, there is the wall of a Saw Mill/Timber Mart. Whereas, while standing in Jawan Nagar Pitfall, the Gate of Uday Gas Agency is visible.

(a) Before entering the Khada of Jawan Nagar, there is a broken wall which is known as **Jawan Nagar's broken wall.** The broken wall has an entry in Jawan Nagar No.1. (According to prosecution case, the said wall was not broken before the incident, but on the alleged day of offence, it was demolished at 04:00 p.m.)

(b) After completion of Medan or Jawan Nagar-No-Khado,

four lanes of Jawan Nagar Gali No.1 to 4 are situated. In other words, the Jawan Nagar-No-Khado is between Hussain Nagar Gali No.9 and Jawan Nagar Gali No.1. It is observed that there is **New Mahakali Dugdhalaya** situated in Jawan Nagar Gali No.3 which is right in the front of entry point of Jawan Nagar Gali No.3.

(8) While passing through the Jawan Nagar Gali No.4, it is observed that the broken wall of Jawan Nagar, which is approaching the Jawan Nagar Pit Fall, can easily be seen. While passing through this street, there is **the House of 'Ghori Appa'.** This house has a terrace. The Court went upto the terrace of 'Ghori Appa' by climbing stair-cases. Upon reaching the terrace of 'Ghori-Appa', it is observed that one of the side of the terrace wall is made of thick pillars having gap of around three inch or so between each of the pillars. The terrace of Ghori Appa can be climbed up through two different stair-cases, both of which are falling in the Jawan Nagar Gali No.4. This terrace and one of the terraces of Gangotri Society has a common wall. The height of the said wall (parapet wall of Ghori-Appa House) is measured as 0.90 metre. From the south-west side of the terrace of Ghori-Appa, the place of incident of burning of Ayub, **limb-boy,** near S.R.P. quarters can be visible. Even on that side of the terrace, there is a pillar-net as described earlier.

In other words, the last lane of Jawan Nagar where the house of Gauri Appa is situated, has a common wall on terrace with Gangotri Society.

(9) After completion of the visit to Ghori-Appa's terrace,

the Court saw a way in the wall of S.R.P. Quarters from where there is an entry to the S.R.P. Quarters, which is situated right at the end of Jawan Nagar Gali No.4. This wall way of S.R.P. Quarters makes it very easy to enter into S.R.P., quarters. One can climb and can easily go from this side of wall of Jawan Nagar Gali No.4 to S.R.P. Quarters.

(a) The house of **Jay Bhavani (dead accused)** is situated in Jawan Nagar Gali No.4 on the road opposite to S.T. Workshop Wall. It has a small veranda. The name plate of "Mukesh Rathod, Advocate, Gujarat High Court (of A-40)" in Gujarati language is clearly visible. This house is falling in Jawan Nagar Gali No.4.

(b) While passing through the road between S.T. Workshop's tall wall and the Muslim chawls, the streets and Galis of Gangotri Society, Gopinath and Gokul societies can be seen. The people residing here seemed to have been residing in good condition comparing to the people of the Muslim chawls. The houses seemed to have been well-constructed and spacious enough to reside. This society is also situated on the parallel road passing by touching the S.T. Workshop wall.

(10) It is noticed that one temple is also there in the society, so it can be very well be presumed that most of the residents of this society are Hindus. The temple is with iron grill which is a balcony indeed. One closed shutter shop is also there in front of the temple, which might be a hall or go-down.

At the end of second lane of the Gangotri society,

there is S.R.P. wall situated, which is also referred as the entry point to SRP Quarters premises. The space on this wall is too narrow to enter. There is not enough space so that more than one person can enter in the SRP Quarters by this way. There is distance between the house of Jay Bhavani (who is dead) and the shop/godown where people might have hidden themselves at the time of incident. At present also, there is a broken wall adjoining to the gap where from one can easily enter from the second lane of Gangotri to the SRP Quarters.

All the lanes of Gangotri society are in queue.

(11) The **Water Tank (Pani-Ni-Tanki)** is located between Gangotri Society Lane-III and starting of Gopinath Park. In other words, it is between Gangotri Society and Gopinath Park or Society. On seeing the site of water tank, there is an open space in a rectangle shape which is below the water tank which seems to be in Gangotri Society. At the end of the shop, below the water tank, there seems to be a newly constructed wall, which has provided entry point to the water tank. There is a gap which is rectangle in shape in between the last wall of the shop and one apparently newly constructed house. The water tank is not at all of much height. At the time of visit, beneath the water tank, wastage and rubbish had gathered in the vacant space. The land in 'U' shape below the water tank is a vacant piece of land between the end of Gopinath and beginning of Gangotri while coming from the direction of Gopinath Park.

While visiting the **Gopinath Society Lane-II and Lane-III,** the Court has observed that there are nicely

constructed houses in this society. There are total four lanes of Gopinath Society. The visit continued to **Gokul Society** adjoining to Gopinath. On completion of Gokul Society, there is a curve of S.T. Workshop wall and inside the S.T. Workshop, there is another Watch-Tower, which could be seen by standing at the curve.

Note : It is observed that all the chawls and societies are falling on the right hand side whereas the long S.T. Workshop wall is falling on the left hand side.

(12) The Court also visited the **very big ground** which is situated upon completion of Gokul Society, where debris, waste and unused plants could be seen. The road which is parallel to S.T. Workshop Wall, is turned at left hand side at this point where the very big ground starts. The said wall is there upto about half a kilometre area where the very big ground is situated. A well (Kuvo) is also situated there in this very big open ground. While standing on the big open ground, one can see Navrang School situated at the point where the ground ends, which is opposite to Gokul Society or which is on the opposite end of the ground. There is a canal passing through on the right hand side where the ground ends and another road starts.

(13) **The Wall of S.T. Workshop :** The S.T. Workshop is a very tall wall upon which there is fencing. Inside the S.T. Workshop, about three watch towers could be seen most of which are taller than the wall including the fencing.

This wall has a beginning from the gate of G.S.R.T.C.'s Gate known as S.T. Workshop's Gate. All the

Muslim chawls start from the main road viz. this point. The wall goes from West to East and it is parallel to all the chawls and the society viz. the above referred six chawls. This long wall of the S.T. Workshop is parallel to all the nine chalis of Hussain Nagar, the area of Jawan Nagar Khada, four lanes of Jawan Nagar/Jawahar Nagar, Gangotri Society, Water Tank, Gopinath Society and Gokul Society and when the Gokul Society ends, the S.T. Workshop wall takes a turn. In other words, all the chawls, mentioned society etc. are on one side of one internal road and on the other side of it goes the wall of S.T. Workshop in parallel position.

(14) The **House of Jadi Khala (Hajra Bibi)** is situated **in Hussain Nagar Gali No.3.** It is observed by the Court that there is no escape except the main door from the house. The house is all surrounded by walls; there is only one way to go out i.e. the small exit. After coming out of the gate of house of Jadi Khala, there is house of Javed Ismail wherein there is a big iron grill from which the view of the house inside could be seen. Inside the house, first comes the lavatory. (In the house of Hajra Bibi i.e. House of Jadi Khala, the murder of brother of Hussaina Banu (PW-135) took place according to prosecution case). The said lavatory has also iron grill having visibility outside.

(15) **Uday Gas Agency** is near the Jawan Nagar Khada, but it is also having entrance on the main road i.e. National Highway Road. The place passing through the main highway road has an entrance to Uday Gas Agency and other Timber Marts. It is adjoining to Muslim chawls and S.R.P. Quarters. It is observed that opposite to Jay Ambe Parlour/Provision in the

straight lane, there came many timber marts which are the premises of something like industrial estate, prior to which comes Rudraksha Hospital. In this industrial kind of area, Uday Gas Agency is situated which is adjoining or very close to the Khada. Adjoining to Uday Gas Agency, there is panchshil, a place wherein Satya-Narayan Timber Mart etc. are situated. The Jawan Nagar -No-Khado is near to that Timber Mart which is, in fact, not a pit-fall, but a kind of large ground having uneven land.

(16) The National Highway : The Small shops made in the houses of the Chalis facing the main road have opening on the service road which, for the purpose of this report, will be referred as 'Main Road'. After the service road, there is foot-path, which also seems to have been used as parking and after which, the National Highway is situated. On the end of the National Highway, there is a road for the B.R.T.S. route. This description is for the one part of the Highway. On the other part of the highway, similar things are situated in similar sequences.

(17) The S.R.P. Entry Gate : It is a big entry gate of S.R.P. Quarter for both ways i.e. entry and exit. From S.T. Workshop Gate & S.R.P. Quarters, main entry is in straight line and it has a distance of 400 metre. Adjoining to S.R.P. Quarters, there is Krishna Nagar Bus Stop. Then there is Krishna Nagar-Char-Rasta and thereafter the **Bhagyodaya Restaurant** is situated. This restaurant is in market area, which is thickly populated area. It is situated in one complex on the left hand side on the main road.

(18) The Dhanushdhari Mata Mandir : This area is nearer to the Naroda Patiya area and Naroda Patiya Police Chowki area and this Dhanushdhari Mata Mandir is on the side of the service road, which is located in front of Rudraksha Hospital and nearer to one Manan Auto Link.

There is '**Manan Auto Link'** (which was originally of A-44 known as 'Bipin Auto Centre'). The said 'Manan Auto Link' is situated right on the service road and behind the said Manan Auto Link, the said Dhanushdhari Mata Mandir is situated.

(19) The Nurani Masjid is situated right on the Ahmedabad-Naroda Highway and in the opposite direction of the entry point of the chawls and/or Gate of S.T. Workshop. It is situated right on the service road. Outside the Masjid, there is Milan Tea Stall, Milan Fry Centre, Milan Pan Parlour, Nurani Cycle Store etc. and it is looking like a thickly populated area because of the series of shops and assembly of people over there. It is two storied Masjid; the religious place for worship by Muslims is on the ground floor while the 'Imam' of the Masjid is residing on the first floor. (The Court was informed that the marbles of the Masjid is fitted after the occurrence)

From Nurani Masjid, a newly constructed building having parapet of cement netting with open terrace with ceiling and terrace on the pillars is situated, which is right on the road and the said building has a sign board of 'Khwaja A-Shifa, Rahat Davakhanu' written in Gujarati language.

(20) The **Kashiram Mama-Ni-Chali, Jikar Hasan-Ni-**

Chali, Sundarlal-Ni-Chali, Old Masjid, Chali of Old Masjid, Pandit-Ni-Chali, Hukamsingh-Ni-Chali, Kashiram Mama-Ni-Chali, Khemchand-Ni-Chali, Jikar Hasan-Ni-Chali are all situated behind and/or around Nurani Masjid in a haphazard manner for which description at paragraph 5(a) to 5(f) of this report is applicable.

(21) There was no Natraj Hotel on the date of visit.

(22) **The S.T.Workshop** is situated besides Naroda Police Chowki. The visit is to get knowledge about the area, height of wall and distance from the chawls falling in front of the S.T. Workshop Wall. It is a very big premise with open space where unused buses of G.S.R.T.C. are lying for service purpose. It is noticed that there are large drums, exactly opposite Mahakali Dugdhalaya. There is a Watch Tower with staircase, where one can easily climb-up and can target the mission. There are numerous waste of iron pieces, numerous large drums and heaps of wooden wastes and iron waste lying near the wall. It seems that there are angles with iron fencing fixed right on the compound wall.

(23) There is a vegetable spread over named as **'Padma Shak-Wali'** sitting right near the Gate of S.T. Workshop, which is the entry point of all these Muslim chalis (affected chalis) which is also known as **Hussain Nagar Nu Naku** where from the road parallel to S.T. Workshop starts.

(24) There is no **neem-tree** and there is no **public water tap** existing at the time of visit."

(B) MAPS OF THE SITE OF THE OFFENCE V.C.D. OF THE SITE OF THE OFFENCE

(B-1) PW 63 :

(1) PW 63 has been examined by the prosecution side to establish the maps drawn and prepared by the witness. This witness states that he has prepared the maps based on the panchnamas which were given to him. The panchnama has come on record at Exh.1749, which panchnama was prepared in four parts. It has come on record through its panch PW 256. There are many panchnamas of the site of the offence. The witness states that he has prepared the maps on the basis of these panchnamas. The panchnamas were of the site position as was in the year 2002. The maps prepared from them, are also revealing the position of 2002.

(2) Through this witness, all the maps have come on the record, all of which have been exhibited as Exh.474/Part-I to Part-V as stated by the witness in four sheets. Five parts of the map have been prepared and in the last sheet, part-IV and Part-IV have been prepared.

It is clarified that five different panchnamas were given to the witness on the basis of which the tentative maps have been prepared by the witness.

(3) During the course of the cross-examination, it has been revealed that no police officer has helped the witness in preparing the maps. The witness has visited the site of the offence for nine days; the witness has verified from the persons at the site about the person in possession in 2002 and who are

at present in possession of the properties; the names of whom have been shown in the maps and that accordingly, he has shown the places in the maps in accordance with the panchnamas. After the maps were prepared, the same were given to the person who came to receive those maps for Mr. Chauhan (of SIT).

(4) It has been elicited from the witness that no statement of the persons who are at present in possession of the property of the victims of the offence are taken and even statements of the panchs of the panchnama, have also been not recorded by the witness or no interrogation was made by the witness of those persons.

The witness went alone to the place mentioned in the panchnama, the witness has not seen as to what is the situation inside the S.T. Workshop; the patiya police chowki has not been shown in the maps; the names of the chawls have not been mentioned in the maps; the video cassette of the site of the offence has not been viewed by the witness, are also the facts came on record during cross-examination.

(5) In the opinion of this Court, from the cross-examination of this witness, nothing can be said to have been revealed by which any reasonable doubt is created against credibility of this witness. The witness has admitted that he has not recorded the statements of the persons in possession, of the property, of the victim, of the complainant or of the panchas of the panchnama, but then the witness has no duty to record such statement, nor such yadi was given to the witness. The witness was only required to prepare map on the basis of the

panchnamas, as per the yadi issued to him which he did. The PW was not required to know as to what is inside the S.T. Workshop; the witness is not required to know as to whether the S.T. Wall is straight or not. There was no patiya police chowki in the year 2002, hence it is obvious that the witness would not show that police chowki in the map as the witness has to show in the maps whatever was there in the panchnamas.

(6) In paragraph 40, the witness has very specifically stated about the maps to have been prepared in five parts, in four sheets wherein part-I reveals the places near Nurani, around Nurani and on the backside of Nurani. In part-II and III, all the Muslim chawls opposite Nurani which are upto the open ground of Gokul Nagar, have been shown.

(7) In the opinion of this Court, Part-1 is not relevant except for the placement of Nurani Masjid and its surroundings as there was incident of fire in Nurani or Nurani Masjid having been torched by the men of the mob. In the same way, there were incidents of torching shops dwelling houses, looting and doing ransacking of the property around Nurani.

In the opinion of this Court, the witness has not elicited any information by which the correctness or preparation of the maps by him can be doubted and that what he has stated in his examination-in-chief, can be doubted. He prepared all the maps in five parts in four sheets from the panchnama at Exh.1749.

(8) The witness has admitted that he has not gone inside the area shown in Part-III of the map. The rough sketch which he

has prepared, has been taken on record during the course of the cross, which is at Exh.479. The witness states that this is a rough sketch which he has prepared for his better understanding to prepare the map. The witness has admitted that the lanes and streets have been shown in a straight line but, as a matter of fact, it is not in straight line.

In the opinion of this Court, this fact hardly makes any difference because what the witness is telling right in the examination-in-chief is that he has prepared the maps according to the panchnamas of the site (Exh.1749). He admits that he has not visited the well, but according to the Court, it is not even required.

(9) The witness has admitted that the lanes Nos.13 to 18 have been shown in part-III of the map, but the names of the said chawls have not been shown.

It needs a note that in the panchnama also, the lanes have been shown as lanes only and they are not shown with their names and therefore, when the witness states that his maps are prepared solely basing upon the panchnama (Exh.1749), the deposition needs to be weighed accordingly.

(10) The witness admits that in part-III, the street No.18 has been shown which is Gangotri Society. The witness admits that most of the houses in this lane were only having ground floor; very rare houses have two floors or three floors.

The witness admits that no separate list of the names of owners of the houses shown in map Exh.474 has been

prepared. The witness has again confirmed that whatever was shown in panchnama that only he has reflected in the maps. In short, the maps are nothing but the reflection of the panchnamas.

(11) This Court has questioned the witness and has learnt that the witness is an experienced person to prepare such map as it is part of his job.

(12) Having gone through the entire deposition of PW 63, the different four maps at Exh.474 Part-I to V, different panchnamas at Exh.1749, this Court is of the opinion that part-I is relevant only for the purpose that in part-I, the Nurani Masjid and surroundings have been shown.

(13) Part-I is important to an extent that about 44 shops and dwelling houses have been shown to have been torched on that day. In the same way, about 33 incidents of looting and destruction and damaging of 33 properties have been shown in the maps.

This part of the map has not been challenged in any manner by the defence.

Even the placement as has been shown, in part-I of the map, of the Nurani Masjid has also not been challenged. Hence the placement of the Nurani Masjid on the road and torching of about 44 shops and dwelling houses and ransacking, destroying and damaging about 33 properties shown in the maps stands proved. All these have not been challenged in any manner, which is the most relevant part of

the Part-I of the map. This important information proves the prosecution case of the mobs having burnt, destroyed, ransacked and damaged property of Nurani Masjid and around and behind Nurani Masjid beyond reasonable doubt. These properties, according to PW, were of Muslims in addition to Nurani being religious place for Muslims.

(14) As far as part-II and III of the maps at Exh.474 are concerned, it is revealed from the maps that in both the maps, all the Muslim chawls have been shown which were all situated opposite Nurani masjid. In the entire map, there is only lane number or street number and no lane is named.

What is important part of maps is in Part-II and III. It is shown in the said parts of the maps that about 134 houses and numerous shops were torched on that day as has been reflected in the panchnamas and about 88 properties were looted, ransacked, destroyed and damaged. This facts are only for Muslim chawls situated behind Nurani Masjid.

These figures are only the figures of Muslim chawls. This is nothing but the reflection of the panchnamas of the site of the offence. The incidents of torching houses and shops and ransacking, destroying and damaging and looting about 222 properties have nowhere been challenged. It is therefore, clear that even according to the panchnamas, all of which have been reflected in the maps prepared by this witness, were about 134 houses were torched and about 88 places were damaged, destroyed and looted. In this part, even water tank has been shown. The part-IV and V of the map are not much relevant.

Each of the parts of Exh.474 - the maps, according to the witness, are based on the panchnamas. Even these parts of the maps proves the prosecution case as discussed.

(15) During the course of the cross–examination of this PW 63, Mark – 'N' and 'M' have also been referred to by the defence and on that basis, questions were asked to the witness.

This PW is found truthful, who did his official act. There is nothing to doubt the proprietary of the job he did.

(B-2) PW 315 :

(1) PW 315 is the witness who has prepared map, Exh.2222 by zooming map Exh.2221. These maps prove an important aspect of damages at Muslim chawls etc.

During the course of the cross-examination, it is admitted that the places shown in map Exh.2221 have not been shown in Exh.2222.

What is notable, is the sequence of the Muslim chawls have remained same, the word used in this map is 'Jawahar Nagar', but then many of the PWs have stated that it is known as 'Jawan Nagar' also. Further, there is no demarcation of the streets based on its names. But in these maps, street No.1 to 19 have been shown. In these maps, the measurement of the highway is shown to be 60 metres whereas, during the visit of the Court and otherwise, what has come on the record is the measurement of the highway is 56 metres even on the day.

This witness has admitted that through the map, he has shown the position prevailing in the year 2010. He has also admitted that he has not measured the highway, but he has written 60 metres from the record of D.I.L.R. (It is excessive by 4 metres)

(2) In the opinion of this Court, the map Exh.2221 and 2222 cannot be base for deciding the site position as, firstly, the Court has to decide the situation which was prevalent in the year 2002 and not of 2010. The position shown that of 2010 is not useful and that it is not relevant as well and considering the facts admitted about measurement of the highway after zooming there seems to be no exactness in the zoomed map etc., Hence this Court is of the opinion that these two maps and the witness cannot be useful to prove the position at the site in the year 2002.

(B-3) PW : 215

(1) This PW was a videographer who was called upon by Investigating Officer No. 2 Shri P.N.Barot on 11/03/2002 opposite Nurani Masjid. The witness did video shooting of the site of the offence as was directed by the police officer. The videography was near S.T. Workshop, Opposite Nurani Masjid, Jawan Nagar, other chawls and of society. The video shooting was done in presence of both the panchas and the video cassette was handed over at the place of the shooting itself. The video cassette was sealed which is the same shown to the witness, which has been identified by the witness. This VCD is Muddamal No.6 of the case property which was recovered through panchnama Exh.1228. During the course of the cross-

examination, the witness was confronted for having not played the cassette after the recording and whether the cassette was empty before the shooting or not. In the opinion of this Court, from the replies of the PW, no doubt is left out in the mind of the Court as the witness has identified the cassette which was played in the Court and which was working. The emptiness of the cassette is also not doubted since the witness was sure about it.

Through this witness, the prosecution has proved that a VCD was recorded on the 11th day of the occurrence by Investigating Officer No.2.

While the cassette was played, it is clear that Nurani Masjid and adjoining to it the building where dispensary was there, the Milan Tea Stall outside the Nurani and numerous shops around the Nurani can be seen to have been completely burnt. The effect of flames can be noticed all around the properties like roof top of the shops. The shops itself can be noticed to have been shattered into pieces all around, nothing except ruins can be seen. The pieces of burnt roof top, pieces of building can be seen. Same situation has been noticed while watching the VCD, more particularly the shooting of the Muslim chawls opposite Nurani, in front of the S.T. Workshop wall. The entire area was no less than burial ground. The houses have been noticed to be in wracked condition. Wrack, broken doors, broken shutters and tremendously burnt houses are evident of a big stampede or a cyclone of violence had passed through this area. There were burnt hand-carts, burnt vehicles, burnt and broken vehicles, vacant houses, apparently seen to have been left open. Everything have been seen to have

been set on fire. The effect of burning flames are seen all around; many properties were knocked down and there were cement rubble all around. There was water tank at the height of above the ground floor shop only meaning thereby, the tank was not on the height. The entire Muslim area, had no inhabitants, everything was scattered and entire scene was terrific. The VCD speaks of the tribulations to have been passed through the area. No doubt would be left in the mind of the viewer that offensive attack was done and the violent disorder with dreadful scenes must have been witnessed by the area. The *khancha* near water tank can also be seen, the vacant houses and shops had nothing excepts pigs moving all around and some stray dogs.

Adjoining the Muslim locality, the societies have been shown, where inhabitants can be seen to have been residing there. The houses of the Gokul or some society were vacant and semi-constructed.

The place near the water tank was such where 58 persons can be burnt alive and if from the height, inflammable substance would be thrown, it would fall on the trapped people in the *khancha*.

In the VCD, the SRP Quarters, the broken wall which makes the way to the SRP Quarters can be seen. In the same way, near the broken wall of Jawan Nagar, the dashing of the big vehicle which was lying even in VCD can be seen.

This VCD is not perfectly shot; the name-plates of the places which have been shot, have not been placed, but having

visited the site, the above observation could be obviously noted.

(B-4) PW 178 (In part)

(1) This witness is Investigating Officer No.2 in whose presence the VCD of the site of the offence was prepared and who has recovered it through the panchnama and who identified the VCD to be the same VCD, after playing it in the Court.

(C) FINDINGS :

(1) If the VCD as discussed above, the maps at Exh.474, part-I to part-V, the maps at mark 'N' and 'M' referred in the cross-examination, panchnama Exh.1749 are seen, then in all of them, the following points have emerged as undisputed position, which are noted herein below.

(i) Certain chawls like Imambibi-Ni-Chali, Chetandas-Ni-Chali, Pandit-Ni-Chali, Hukamsingh-Ni-Chali, Badarsingh-Ni-Chali, Kumbhaji-Ni-Chali etc. were adjoining to National Highway and were spread over in the extreme frontal area opposite to Nurani Masjid; after that the lanes of Hussain Nagar call it nine lanes or call it ten lanes but the place of Hussain Nagar was there and thereafter lanes of Jawan Nagar may be three lanes or four lanes and thereafter Gangotri Society, water tank, Gopinath Society and thereafter a big Medan were there. At that time, the wall of the S.R.P. Quarters was upto Gokul Society. (The site position is mostly similar even today.)

(ii) Nurani Masjid is situated right on the highway itself which is opposite to the Muslim chawls or to put it in other words, Nurani Masjid is on the western part of the National Highway opposite to which all the Muslim chawls are situated. These Muslim chawls were the most affected area in the communal riot of 2002.

(2) This Court opines that PW 63 and the maps prepared by him are reliable to an extent that they tally with the panchnama made in four parts, at Exh.1749-part-I to part-IV and the maps Exh.474/ part-I to part-V, the maps which are prepared in four sheets. In the fourth sheet, part IV and IV have been included.

(3) In nutshell, the VCD, the maps, the panchnamas (Though neither number nor name of chawls can be seen) and the site report of the visit of the Court clearly shows the sequence of the Muslim chawls name wise, the placement of the chawls and the placement of Nurani Masjid as put up herein above as undisputed facts.

(4) The prosecution case for 28/02/2002 gets the greatest strength as the torching of the shops, of dwelling houses, of the Nurani Masjid, damaging destroying and ruining of the property of Muslims occurred on 28/02/2002 as is clarified in the above referred maps and panchnamas.

In all about 299 different properties including the dwelling houses, shops etc. have been burnt, destroyed, damaged and ransacked near Nurani Masjid, behind Nurani

Masjid and Opposite Nurani Masjid, out of which about 222 properties were of Muslim chawls situated opposite Nurani Masjid. (Reference : The discussion below the head of PW 63)

These figures are over and above lot many burning and damages of vehicles, household properties, pet animals like goats, many movable properties, handcarts, wooden cabins etc. All these have happened on the date of the riot itself which is self-eloquent.

The damaging and destroying of Nurani Masjid being religious place of Muslims has also its own importance.

(5) As is clear from different testimonies of the PWs and even from the maps, from the VCD etc., the following are undisputed facts about the site of the offence:

(i) The site of the offence has seen atleast some changes after the occurrence.

(ii) The sequence of Hussain Nagar, Jawan Nagar, Gangotri Society and Gopinath Nagar has not changed.

At that time, in 2002, Gokul Nagar was under construction and in Gangotri and Gopinath Nagar, many houses were not occupied.

(iii) After the trial, the site of offences which are proved, are only Muslim chawls (opposite Nurani), 'U' shaped below the Water Tank situated between Gangotri and Gopinath Nagar, Nurani Masjid, outside Nurani Masjid and

Highway. All other sites mentioned in the charge have not been proved to be beyond reasonable doubt as the sites of offences, by the prosecution side.

(iv) As emerged from the testimonies of the PWs, the locality where Muslim chawls Opposite to Nurani were situated was popularly known as chawls of Hussain Nagar and Jawan Nagar or Jawahar Nagar.

(v) Many of the PWs were tenants of the houses and were not very clear on the internal names of chawls as the frontal part of the area was known as Hussain Nagar and the latter part as Jawan Nagar. The tenants were frequently changing their houses hence the internal chawls were not known in details to such Muslim inhabitants.

(vi) There was a large big ground near S.T. Workshop at that time.

(vii) The Natraj Hotel was very close by to Nurani Masjid at that time. The site visit of the year 2012 may not clarify the situation of 2002 but it can give a broad general idea of the site.

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CHAPTER-III : TEST IDENTIFICATION PARADE

(A) GENERAL :

(a-1) One of the important aspect was about Test Identification Parade. All citations and the principles on the subject propounds the principle that, for the witnesses who are

not knowing the accused before the incident Test Identification Parade is necessary to corroborate the identity before the Court. But, in a case where the witnesses are knowing the accused even before the incident, the question of not holding Test Identification Parade during the investigation, would not come in the way.

(a-2) It is nowhere specified that how the witness should be knowing the accused and there is no straight jacket formula which can be applied on the issue of identity of the accused in the Court.

(a-3) In nutshell, if the witnesses are knowing the accused before the incident in any manner, it needs to be held sufficient if the Court finds the identity without mistake and genuine.

(a-3.1) The Court has to remember that the kind of the witnesses are such who were mainly hand to mouth people with large families. It should be known to this Court that how an ordinary man is working hard to make his two ends meet. In such a situation, it can happen that while going and coming from work or while attending such occasions like public meetings, election meetings, etc., the witness has an opportunity to meet many people whom then, the witness knows by face, but since he may not have any necessity to know their names etc., he may not be knowing them. But merely that does not mean that he does not know the accused. When the time comes like this riot, the witnesses may learn the names of the leader of the another community alongwith those who were involved in riot.

(a-3.2) The principle of the need of Test Identification Parade, particularly in case of strangers, has developed in the fact situation when in the village, outsider criminals come and attack or stranger dacoits come for the offence of dacoity or persons who have been engaged, come for committing offence of murder etc. where the victim has not a single opportunity to see even face of the accused.

(a-3.3) In the facts of this case, if addresses of almost all accused barring one or two are seen, then it is noticed that they are resident of the same area or having their business concern in the area of site of offence. In such fact situation, the lacuna of Test Identification Parade is not at all holding field, as submitted by the defence.

(a-3.4) The principle is that when the appreciation of evidence of the rustic, villager kind, innocent, straight and simple people like the witnesses in this case, is to be done, it is to be remembered that they have not learnt the general shrewdness people have adopted in day-to-day life. If it is not so kept in mind then injustice is likely to cause to the victims or such an attitude may result into miscarriage of justice.

(a-3.5) In the testimony of PW 83, at paragraph 28 and 29, the witness has stated that when she came out at about 09:00 or 09:30 a.m., there were about 10000 persons near Nurani Masjid. The witness has very specifically stated in paragraph 29 that all the four accused were in front of the witness and, therefore, she had identified them.

(a-3.6) This is an illuminating reply which proves the

proximity or the close distance at which the accused were standing. The opportunity of observation to the witness was apparently available. Moreover, unless the prior acquaintance is there, the witness cannot say with all confidence about such a thing.

(a-3.7) From this illustration, it is very clear that if the rustic witnesses are asked in a misguiding manner, the replies are bound to be misguiding based on the mis-perception of the fact by the witnesses. In this illustration, if the re-examination would not have been taken, nothing could have been clarified on the record. But in case of some of the witnesses, re-examination has been avoided, mostly to avoid lengthy and taxing cross-examination of the witness against the re-examination.

In the facts and circumstances of this case, the witnesses are Muslims whereas the accused are Hindus. Hence normally it is not probable that they would have the relationship of visiting house of each other, sharing tea together or sitting together for gossiping. Hence cross of such suggestions and on these aspects is not impressive and is found to be far away from reality. These replies do not rule out many more possibilities of acquaintances like knowing by seeing, knowing by name, knowing by face or by linking relation or knowing because of the kind of business the accused does like Dudhwala (A-58), Videowala (A-41), Bipin Auto (A-44), Babu Garagewala (A-33), known by sons of so and so, son in law of Dalpat and person like son of Bhavani (A-40), son of Kadam, known as Langdo (A-22), known as Bajrangi because of his connection with the organization and moreover because the

victim and the accused reside in the locality of Naroda Patiya for long A-2, A-41, 38 & P.A. - A-62 are known in the area as close aide of A-37.

(b) This Court opines that even if T.I.P. is not held by the I.O., in case of prior acquaintance between the PW and the accused identified in the Court by the PW is enough and satisfactory and is sufficient to bring home the guilt when the Court is satisfied about the identity of the accused to be of not mistaken one and when the deposition of the witness is otherwise found satisfactory.

(B) NO IDENTITY OF THE ACCUSED IN THE COURT BY THE PW :

(a) Certain accused are very leading personalities of the area like A-18 who had been leader in many Hindu organizations like RSS, VHP and Bajrang Dal etc. He is well known for doing the work of Hinduism. A-44, a leader of B.J.P., whose office is situated on the main road, is the office of B.J.P. candidate in election, If the Sting Operation is understood, he is facing numerous Sessions Cases, most of such cases are mainly taking out Hindu women from the Muslim houses who is married to a Muslim man. It is not possible that such a person was not known to any Muslim. Prior acquaintance of this accused can safely be inferred. Prior acquaintance of all these accused who are doing their businesses in the area and who are residents of Naroda Patiya can also be inferred as, all the PW were residents of this area.

(b) A-2, A-18, A-20, A-41 etc. are political workers and

canvasser of A-37 and or / are holding different positions in public life, including members of Peace Committees etc.

In all such cases, therefore, the Court can safely draw inference of prior acquaintance and they are bound to be well known in the locality.

(c) Such persons are bound to be very popular and influential and that when such persons are admittedly boosting their police influence, like A-18 who clearly says that even police is scared of him.

For A-18 and for A-22 it was proudly mentioned that for Muslims even a mention of the name of these persons is sufficient to scare them.

(d) It needs a note that normally in case of wrong identity of the accused, this Court has granted benefit of doubt to the accused since, in such case, it can not be ruled out that the PW was perceiving wrong person as, the accused in his mind or say naming one and identifying another shows some mistake in the mind of the PW about the identity hence, in case of absence of TIP and inability to identify before the Court, benefit to the accused is granted if, the Court is convinced about the likelihood of mistaken identity..

(e) Whenever possible in the fact of the case, inference of prior acquaintance has been drawn. Judicial wisdom requires, the Court to keep its eyes and ears open. In the kind of the cases, unless the right time comes the Court has to keep such opinion in the mind to draw inference of prior

acquaintance of the witness with the accused. After-all the duty of the Court is to search out the truth and not to allow the accused to take the entire show into their hands.

(f) It needs a very special note that none of the accused was given any earmarked seat in the Court house. They were not compelled by the Court to sit inside the Court house throughout. The accused were absolutely free from going outside the Court at any moment. At 10.30 a.m. the signatures of the accused used to be taken, but thereafter no other signature, to note the presence of the accused, was taken. As and when the witnesses have not identified the accused, the Court has recorded in specific about the fact that while the witness went to dock, the presence of the accused was in the Court or not if so required.

In light of the above discussed facts, this Court has practiced the theory that whenever the accused was not identified by the witness and if at that time the accused was present, the same note, should be made.

(C) TWO WOMEN ACCUSED & T.I.P. :

(a) In the trial, there are three women accused. A-37 is a leading and already known personality and was a public figure, hence there is no possibility of any mistaken identity of A-37. Thereafter, only two women were left out. Hence, whenever any witness is naming two women, it is easy for that witness to identify the two as there were only two such women. Hence it is practiced that whenever the witness gave names of both the women, unless the identity inspires confidence of the Court, it

was not easily acted upon.

(D) GENERAL FOR T.I.P. :-

(1) The defence had itself suggested on numerous occasions that because the accused are residing in the same locality, having their business concern in the same locality, having some contact with the witnesses, the witnesses were knowing the accused from previously like in case of PW 157 at para 82. It is suggested for A-30 or A-55 and for A-48 on the ground that the accused are residing in the same area. Even this material shows that the inference of prior acquaintance can very well be drawn by the Court even if the PW are unable to express the same.

(2) Further noting the fact based on observation of this Court is that, all the witnesses and all those who are inhabitants of the Muslim locality are mainly daily wage workers, having large family, mostly doing labour work and are obviously falling in extremely low income group, who all are residing in the hutment and mostly roof top houses, which too were also not fully equipped and even their houses were without water taps at that point of time. To put it in short, they are from lower strata, very poor people who are mostly working day and night for their living.

(3) On the other hand, the observation of the Court is that most of the Sindhi accused and A-18 are by and large businessmen, are influential people, members of different committees of the police station, quite prosperous, while another group of accused is of Chhara tribe who were then

governed and dominated and were under the absolute influence of leaders accused like A-18, A-44, A-37 and other leaders. These groups were led by the then M.L.A. of the area i.e. A-37.

(4) The above discussion is for the limited point that, when there is such a wide difference between the class and style of living, they cannot have any transactions of money or visiting each others' house as all was suggested during the course of the cross-examination to prove that the witness has no opportunity or is not knowing the accused prior to the incident.

(4.1) In the opinion of this Court, it is matter of common knowledge and experience that the leading people of the area may not be personally known to every inhabitant of the area but they are known by their names, faces or their image in their area. If the inhabitant is like the witnesses who remain outside the house from 08.00 a.m. to 08.00 p.m., they get very little opportunity to introduce themselves to the leading persons of the area, but during different occasions like election, some celebrations etc. the leading persons are known to the witnesses by their names or by their appearance. As has been suggested by the defence itself, for many of the accused like A-38, A-41 and A-2 were propagating and canvassing in elections for A-37 in the area. Some of the accused are known with their family name or on the name of leading person of the family like A-1 and A-10 are known as brothers of deceased Guddu who had many houses in Jawan Nagar and Hussain Nagar. Barring one or two accused every accused is residing in the surrounding area in very close vicinity of the Muslim

locality and that it is not even the case of defence that most of the accused are residing at a distant place from the Muslim locality.

(4.2) A-18 has himself admitted in sting operation that his residence is hardly in the range of ½ km. from Naroda Patiya. As discussed, he is also affiliated to many organization, is picking up the cause of Hindu girls against Muslim and is admittedly known to everyone in the area.

(5) What was being discussed is the importance of Test Identification Parade. When the witnesses and the accused are residing in the very area quite close to each other for so many years, it is very much probable and hence can safely be inferred though not asked by the learned Public Prosecutor, that the witnesses were knowing the accused so well that not holding the Test Identification Parade during the investigation cannot weaken the prosecution case, no chance of mistaken identity of the accused in the Court and the identity was genuine. Moreover, every lacuna or defect of the investigation cannot fetch fruit for the defence is the settled position of law.

(6) On perusal of the record, more particularly, available addresses of the accused of the year 2002 and noting the submissions made by the defence that since some of the accused were in fact known to the witnesses as their residence and their place of business are extremely close to the house of the witnesses, their identity should not be held a ground to hold them guilty.

(6.1) A-2 has his hotel near the S.T. Workshop. A-4 was

residing in close vicinity of the site of the offence. As the record speaks A-1, A-6, A-7, A-8, A-9, A-10, A-11, A-12, A-13, A-14, A-15, A-20, A-21, A-22, A-23, A-26, A-29, A-31, A-33, A-41, A-44, A-46, A-47, A-48, A-50, A-52, A-58 were born, brought up or have their business places in the area of Naroda Patiya and since the witnesses knew the accused right from childhood of the PW, it was found necessary to assess the distance between the houses of the accused upto the turning of the S.T. Workshop wall from where the way to go towards Muslim chawls begins.

(7) It has been noticed that some of the accused were already residing in the Muslim chawls like Guddu, A-48, A-26, etc. Some of the accused are residing just in the adjacent society or places to the Muslim chawls like Jaybhavani, A-4, A-5, A-21, A-22, A-25, A-28, A-30, A-40, A-54, A-55, A-56, A-60 and A-61. In some cases, the office of the accused is extremely close to the houses of the accused they work in the S.T. Workshop itself they are like A-57, A-59, A-49 etc.

(8) Most of the residences of the accused and commercial places of the accused are at the distance of 200 metres to 400 metres from the S.T. Workshop wall.

(9) If the address of A-17 of Mota Chhara Nagar, A-39 of Chhara Nagar, A-45 of Janta Society (at the distance of 450 metre) and the address of A-51 of Kuber Nagar are seen, then all are not more than 500 metres. It may be at the most within the range of one kilometre as the record speaks for itself.

(10) It is a common experience that in a case where the

accused were residents of vicinity within one or one-and-a-half kilometre from the site of the offence, the possibility for the witnesses of seeing and knowing the accused cannot be ruled out.

(11) The accused Nos.2, 4 16, 18, 19, 24, 27, 34, 36, 38, 42, 43, 62 are all residing at a reasonably close distance from the site of offence. Hence in the case when the presence of any of these accused stands established by positive, cogent and convincing evidence, then the said accused may have to explain for their presence at the site where his presence is not natural, that too with active participation and or with weapons in their hands on the date of riot. It is a matter of common experience that in cases of such call for 'Bandh' when a family man has not to go for his employment or occupation, he would like to be at home and that he would be worried for his family members and would try to be close by them to provide protection to them in case of need.

The accused who does not have natural and normal conduct and when his presence and participation is proved by the PW, he would be placed in the category wherein for his presence at the site, inference needs to be drawn about his active involvement and participation in the charged offences. When the site is at some distance from their residences, the judicial mind becomes anxious to know as to what was that reasonable cause for which leaving the family alone, the man has come all the way from his own residence to this particular Muslim locality, which is the site of the offences. Person coming all the way from his residence, can only be seen in the sense that the site is his political ground or his ground of activities to

be performed in pursuance of the conspiracy or to be the member of an unlawful assembly. These accused were present at the site and at the time where about 222 crimes were committed. This is the site which is flooded by the Muslims.

(12.1) It is submitted that, identity only before the Court is a weak piece of evidence. But most of the witnesses have very much clarified that they were knowing the accused even before incident. Since there is admittedly knowing by face or by name even before the incident, hence, it cannot be termed to be weak evidence in the facts and circumstances of the case.

Moreover, not holding Test Identification Parade is the fault of the investigating agency and not of PW. Prior acquaintance if stated or from the facts if inference can be drawn and when the Court believes the identity to be reliable one and without any mistake, the question of not holding Test Identification Parade is absolutely immaterial.

(12.2) This Court is of the opinion that the fault of the investigating agency of not holding T.I.Parade cannot and shall not be a point to disregard the oral evidence of PW which is substantive evidence before the court, which is otherwise found most credible on count of the identity of the accused as well.

(13) The principle is that, without T.I.Parade, the PW cannot be believed on identity of the accused. If the witness is a stranger to the accused and if he identifies the accused person before the Court for the first time, the Court would not ordinarily accept that identification as conclusive piece of

evidence but, where the accused are already known to the victims, this weakness theory is not applicable.

(14) Even in cases where the accused are identified in the Court for the first time, there is no proposition of universal application that the evidence of identification of an accused as the culprit for the first time in the Court has to be rejected in all cases. There is neither any rule of law nor even of prudence to that effect.

(15) The pronouncement to the effect that as far as the stranger accused are concerned, it is weak piece of evidence, is based on logic, common sense and prudence. Hence in such cases where the accused are strangers to the witness victim and identified for the first time in the Court, the evidence is required to be accepted with great caution.

(16) Whether the accused was known to the witnesses previously, would be a question to be decided by the Court on the basis of the evidence, fact and circumstances that may be adduced during the trial.

(17) In the case on the hand, according to the identifying witnesses, the accused who have been identified by them were known to them since previously. The witnesses who have identified the accused persons have stated about such accused being known to them by their face and appearance where they were not known by name. The accused are admittedly from the same locality as of the witnesses or from a nearby locality. Further an important point cannot be lost sight of that Test Identification Parade was not at all demanded by the accused

during the investigation.

(17.1) PW 56 has very clearly stated that the Chharas in the mob were residing near her house and she was knowing them since, previously. This is an illustration to show that almost all prosecution witnesses were knowing the accused from previously to the incident and that since the accused were not strangers, the question of Test Identification Parade loses its significance.

(18) L.A. Mr.Solanki for the accused has empathetically submitted that since the accused and the prosecution witnesses are from the same area, it is but common that the accused may be present at the site.

This submission by the defence itself suggests that the accused are admittedly belonging to the same area.

(19) L.A. Mr.Kikani through PW 209 or 212 has brought on record, while suggesting about the topography, that Mahajanya Vas is in Chhara Nagar, the Chhara Nagar is situated adjoining to this area where the fateful incident took place. This shows how close the residence of the PW and accused are.

(20) There is clear and positive evidence that the accused and the witnesses belonged to the same area and hence holding of Test Identification Parade or not, would not change the scenario.

(21) An argument has been advanced that all the

accused, after their release on bail, were moving freely and the possibility of the PW having come to know them during this period could not be ruled out. This submission and even the stand of the cross-examiners for accused itself was that they were residents of the same locality hence prior acquaintance is undisputed.

(22) The submission that the persons who had attacked, were outsiders, itself makes it amply clear that defence is submitting that the accused are not outsiders.

(23) Once it is satisfactorily established that the accused are from the same locality, nothing more is required but to accept the statement of the witnesses that they knew them unless it is shown positively that the witnesses are not telling the truth in that regard.

(24) The inference of prior knowledge or identity can be drawn even by the court from the facts and circumstances of the case as well.

(24-A) For an illustration, it needs to be noted that at paragraph 117 of the testimony of PW 73, the witness states that he has informed SIT that he is able to identify all those persons whom he has named, it reveals the fact of prior acquaintance. It is true that the prosecution ought to have taken a positive version on prior acquaintance at-least in re-examination and in the same way, SIT and other investigator ought to have held Test Identification Parade. But, when same has not been done, the Court is not helpless. The Court can gather the fact from the facts and circumstances of the case

and necessary inference is also drawn from different parts of the deposition of the witnesses.

(24-B) The record speaks for itself that barring a few accused, most of the accused are residing and/or having their business place in the locality where all the victims or relatives of the deceased victim resides or were residing at the time of the occurrence. Some of the accused have thereafter changed their houses, but the most important notable point is, in the year 2002, barring few accused, all accused were very much residing and were having their business concern in the Naroda Patiya area and the residences of the accused were also either in the Muslim chawls itself or in the adjoining Hindu societies like Gangotri or Gopinath Society. When it is clearly on record that the accused were residing as discussed above, the Court can and has safely inferred the prior acquaintance between the witness and the accused.

(24-B.1) The Court is aware that in this case, cross-examination is the race between an expert, educated and skilled learned advocate for the defence and ignorant, rustic and innocent victim having very little understanding about the entire court procedure.

(24-B.2) This Court has kept the above factual aspect in mind while drawing the inference of the prior acquaintance. It has also happened that some of the PWs were given introduction of the accused at the site itself by another Muslim who knows the accused very well. In such cases, unless mistaken identity is ruled out, the Court has not believed the said identity to be genuine. It is not important how the witness knows the

accused, what is important is that how correctly, he knows the accused. Prior acquaintance also cannot be meant to narrowly understand it, the acquaintance before the date of offence or for long, acquaintance before the statement or Test Identification Parade is covered in the concept.

(24-C) The illustration of PW 106 is worth quoting, which shows how the information revealed in the testimony or suggestions given by the defence about the addresses of the accused can be helpful to the Court in drawing inference of prior acquaintance between the PW and accused. This shows that the accused is at-least not stranger to the residents of the Naroda Patiya area. In the opinion of this Court, since this information can be commonly applicable to all PWs, whether the PWs are able to articulate the same in his testimony or not, the Court cannot miss sight of the said fact.

(24-C.1) In the testimony of PW 106, it is clearly revealed that A-25 used to regularly have his seat in one grocery shop in the line of Nurani Mosque. In some other PWs, it has been revealed that A-25 was working in AMTS and was residing at Gangotri.

(24-C.2) As far as A-28 is concerned, it is suggested by the defence and revealed that A-28 is known to Muslims as was doing the work of sweeper in the Muslim chawls and was also coming to take food, which is left out after supper.

(24-C.3) As far as A-26 is concerned, it has been revealed that he was residing at Hussain Nagar wherein many Muslims were residing and he has a temple in his house. Hence, all

Muslim residents of the Muslim chawls know A-26.

(25) In all such cases and wherever the fact and circumstance which has been discussed in this part of the Judgement, safely permit to draw the inference of prior acquaintance it has been drawn. If the Court would become technical to search express words of every PW to link the inference of prior acquaintance then in the peculiar facts and circumstances of the case, the witnesses being less than rustic, there would be tremendous miscarriage of justice and the concept of appreciation of evidence would not be used in true spirit.

(26) Prior acquaintance of the witness qua the accused can safely be inferred in this case, there is even a positive and express claim of the witnesses of such prior acquaintance and the fact of they being residents of the same locality is only a factor which strengthens the claim.

(27) The PW who renders explanation with regard to not being able to identify some of the rioters to the effect that the physical appearance of some of them might had been changed, is acceptable as about eight years had lapsed since the PW had seen the accused. However, the wrong identity has been resulted into benefit to the accused.

(28) The identification in the Court has been taken place under the observation of the Court. Enabling the Court to view the action of the identifying witnesses, it does not seem to this Court that there is any substance in the contention of tutoring or showing the accused in advance. Rather, it was apparent

that they were already knowing the identified accused before even the occurrence of the incident, as stated by many of the PW or as can be inferred.

(29) In case when the accused demands the Test Identification Parade during the investigation and if it is not held and then the witnesses identified the accused before the Court during the trial, the accused can very well complaint about the prejudice caused, but here it has not so happened as it is not the case of the defence.

(30) Looking to the happenings, it is not possible to believe that, local residents were not present among the mob of rioters and had not taken any active part in the entire occurrence. After seeing the site it is clear that the Muslim chawls are so narrow (even today), so inter-linked, so clumsy and so dense which was even suggested by cross-examiner and therefore, it is only possible for the local person to enter inside and to achieve the targeted results. DVD of sting operation speaks of A-22 to have entered in this chawl first of all.

(31) It is true that in majority of cases or for majority of the accused, no Test Identification Parade has been held, but the said fault, omission or lacuna on the part of Investigating Officer does not take away the weightage and value of the identification before the Court. If the witness has sufficient time to observe the accused, there is no need to disbelieve the identity in the Court. Moreover, as has already been discussed, if the PW knows the accused before the incident, then no value can be attached for the omission or lacuna committed by the investigating agency during the investigation.

(32) It cannot go out of mind that the test identification parade is mainly held to ensure that the investigation is going on the right path and it is for guideline or aid of the Investigating Officer. In the Court, the witnesses gives substantial evidence about the identity of the accused, whereas Test Identification Parade is merely a corroborative piece of evidence.

(33) Considering the above, the identity in the Court shall be believed if the PW had an opportunity to see the accused in the locality and had sufficient opportunity to observe the accused during the occurrence and in case of prior acquaintance of the accused and the PW as they belong to the same locality.

(E) IDENTITY OF THE ACCUSED IN THE COURT:

(1) It is true that during the previous investigation as well as during the investigation by SIT, in most of the cases, the Test Identification Parades have not been held. The submission of the defence to grant benefit of doubt on this count has no merits, in the light of foregoing discussion.

(2) As far as identity of the accused is concerned, this Court has adopted the policy that the lacuna of Test Identification Parade shall not be used to grant any benefit of doubt to the accused unless it is proved that the accused is absolutely unknown to the PW. When the PW has specifically stated that the PW knows the accused even before the incident and/or from the fact the Court is able to so infer that the

accused is known to PW and when the version of the PW is found credible then the question of not holding Test Identification Parade shall not come in the way.

(2.1) Holding T.I.P. is not final and conclusive evidence of identity. Ultimately, the Courts are required to appreciate considering the facts and circumstances of each case about genuinity and credibility of the identity of the accused done in the Court by the PW.

(2.2) As discussed, barring a few accused most of them reside in the locality of Naroda Patiya and all the PWs, except who were guests in some house of some of the Muslim residents of the area, were also residing in Naroda Patiya area at the time of incident. Hence, it is very safe to draw the inference of prior acquaintance since the parties are residing in the same area.

(2.3) The line of the cross was since the PW has no acquaintance because of some transaction, meeting occasionally by sharing happy or sad moments of life, sharing tea table, no family ties etc. the PW cannot be held to be knowing the accused before.

It cannot be forgotten that the acquaintance can also be by only knowing the name and even by not knowing the name but by only seeing, only by hearing about the person and seeing in T.V. etc. where the accused is VIP, there may be one way introduction meaning thereby the PW knows many things about the accused but the accused may not be knowing the PW.

In nutshell, acquaintance has a very wide meaning

and in that meaning the prior acquaintance has been taken as far as appreciation of evidence of this case is concerned.

(F) OBSERVATION OF THE COURT ON T.I.P. :

(1) It is a hard reality that T.I.Parade has not been held by the investigating agency, but then different witnesses have identified the accused before the Court. It is settled position of law that the substantial evidence of the witness is always what is being stated by the witness in the witness box before the Court. Considering which and in light of the peculiar facts and circumstances of this case, this Court is of the opinion that different situations arose during the oral evidence of different witnesses needs to be dealt with on its own merits and wherever it is permissible by law, benefit of doubt should also be granted to the accused. No fruitful purpose is to be served by discussing those different situations which arose during the trial of this case. Suffice it to say here that each of the circumstance arose has been dealt with by this Court appreciating the merits of particular situation keeping in mind the background of the witness, prior acquaintance of the witness with the accused, demeanour of the witness, the conduct of the accused and many more factors.

(2) This Court is aware that as explained in case of **Manu Sharma,** to be discussed herein below, that if the case is supported by reliable material then identification of the accused in the Court for the first time would be permissible subject to confirmation by other corroborative evidence. In the case on the hands, right from addresses of the accused and of the PW and from the site plan and maps, etc., it stands

corroborated that the accused are known to the PW from previously.

(3) The weight to be attached to the identification of the accused before the Court should be a matter for the Courts of facts and there cannot be any straight jacket formula. The importance of T.I.Parade is mainly in a case where the accused is not known to the witness. In nutshell, the base principle is that each Court has to decide as to what weight can be attached to the identification in a Court in light of the fact and circumstances of each case. This Court has appreciated each identification of the accused in the Court on its own merits.

(G) JUDGEMENTS ON THE SUBJECT :

(1) Further, the judgements discussed herein below also guides this Court.

(a) AIR 2011 SUPREME COURT 1436 "Rabindra Kumar Pal v. Republic of India"

On test identification - Para 11, 13 and 15.

The logic behind TIP is only an aid to investigation, where an accused is not known to the witness.

11. It is relevant to note that the incident took place in the midnight of 22.01.1999/23.01.1999. Prior to that, number of investigating officers had visited the village of occurrence. Statements of most of the witnesses were recorded by PW 55, an officer of the CBI. In the statements recorded by various IOs, particularly, the local police and State CID these eye-witnesses except few

claim to have identified any of the miscreants involved in the incident. As rightly observed by the High Court, for a long number of days, many of these eye-witnesses never came forward before the IOs and the police personnel visiting the village from time to time claiming that they had seen the occurrence. In these circumstances, no importance need to be attached on the testimony of these eye- witnesses about their identification of the appellants other than Dara Singh (A1) and Mahendra Hembram (A3) before the trial Court for the first time without corroboration by previous TIP held by the Magistrate in accordance with the procedure established. It is well settled principle that in the absence of any independent corroboration like TIP held by Judicial Magistrate, the evidence of eye-witnesses as to the identification of the appellants/accused for the first time before the trial Court generally cannot be accepted.

As explained in ***Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1 : (AIR 2010 SC 2352)*** *"if the case is supported by other materials, identification of the accused in the dock for the first time would be permissible subject to confirmation by other corroborative evidence, which are lacking in the case on hand except for A1 and A3."*

The other material available in this case, if any, has been discussed at length in each such identity. Judicial inference of prior acquaintance, expression of the PW, line of cross, etc. are all such, undoubted material.

13. ..... This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration.

It was further held that "*the photo identification and TIP are only aides in the investigation and do not form substantive evidence. The substantive evidence is the evidence in the court on oath.*"

In light of the principle that the logic behind T.I.P. is only an aid to investigation and that its importance is mainly in a case where the accused is not known to the witness, the following part of the judgement is worth reproducing.

"*15.* ***In Jana Yadav v. State of Bihar, (2002) 7 SCC 295, para 38 : (AIR 2002 SC 3325)****, the following conclusion is relevant:*

"*Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.*

It is clear that identification of accused persons by witness in dock for the first time though permissible but cannot be given credence without further corroborative evidence. Though some of the witnesses identified some of the accused in the dock as mentioned above without corroborative evidence the dock identification alone cannot be treated as substantial evidence, though it is permissible."

In the case on hand, the corroborative evidence in most of the cases is circumstance which led drawing of inference of prior acquaintance and express disclosure of the PW about knowing the accused since previously.

(2) Different judgements have made it abundantly clear that even when there is no previous Test Identification Parade, the Court may appreciate the dock identification as being above board and more than conclusive. It has been propounded

time and again that it is not mandatory for the investigating officer to hold Test Identification Parade. The judgements reported at **AIR 2010 SUPREME COURT 2352 "Sidhartha Vashisht v. State (NCT of Delhi)", AIR 2005 Supreme Court 402** guides that even the convictions have been upheld on the basis of Identification in Court, corroborated by other circumstantial evidence, even if the accused had no prior acquaintance. The prior acquaintance and familiarity with the accused does not require Test Identification Parade as, in such cases, Identity is hardly an issue.

(3) The judgement at **Sr.No.31** of the list of the learned Public Prosecutor provides a clue to the philosophy of the subject. Para-47 reads as under:

> "*The Code of Criminal Procedure does not oblige the Investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the Court. As to what should be the weight attached to such an identification is a matter which the court will determine in the peculiar facts and circumstances of each case. In appropriate cases the court may accept the evidence of identification in the court even without insisting on corroboration.*"

(4) Learned advocate for **defence** has emphatically submitted that Sr.No.**31, 32 and 33** of the list of defence

citation propounds the principle that identification before the Court should not be given any weightage. As has been already discussed, this theory is not applicable to the cases where accused are known to the PW, which is common for many of the accused in the case on the hand as against the point that in all the three cited cases, the accused were unknown to the PWs. Hence, no comparison can be made with the case on hand since the facts are totally different. In the opinion of this Court, the citations do not help the defence.

(5) The citation at **Sr.No.30** has also been emphatically submitted on two counts, firstly, for the Test Identification Parade being unfair and secondly, Identification of the accused in the Court. As is clear in Head Note-B of the cited judgement, the witnesses get very little time to see the accused. In contra, the fact of this case is making it amply clear that the time of the offence was right from about 9.30 a.m. which was upto 8.30 p.m. This is apart from the fact that most of the accused reside in the same locality of the site of the offence, who were even popular with the business they were doing, which has been discussed at length and hence repetition is being avoided. Suffice it to say here that here the PWs have ample time to see the accused. Moreover, even such time is also not required in the fact of the case since the accused were already known.

(5.1) In this very judgement at Head Note-C the identification parade, in the fact of the case, has been held to be not fair. This citation is pressed into service for TIP of A-38. But, as can even been seen in the Head Note itself and even in paragraph 21 also, it is clear that the decision of the test identification parade being not fair, has entirely been taken on

the fact of the cited case. In this case, the fact is absolutely different and the test identification parade of A-38 is not doubtful. When a person sees some one or observes some one then, that observation is, in its entirety, for the appearance of person and it cannot be for the moles on the cheeks or some mark below the eye. What is being seen is the entire face. Secondly, it has come on the record that A-38, for whom the submission has been made, was a leading personality of the area and was a close aide of A-37. Hence, in any case, his identification cannot raise such issue. The identification of A-38 can never be decided on his moles if any, at the time of the occurrence. For PW-135, these moles have no importance otherwise, she could have used the same while her deposition in the Court and could have identified her in the Court. In case of the PW-52, A-38 was identified as P.A. to A-37. The PW has explained that when the PW has gone to collect income certificate from the hospital of A-37, the certificate was given by A-38. This has prompted the PW to believe that A-38 is P.A. of A-37. PW 135, who has identified A-38 in TIP though could not identify A-38 in the Court but, the Court is impressed by testimony of PW-135 who can be safely relied upon. Identity of A-38 by her in TIP was not doubtful and there does not seem any change of mistaken mention or identity. Hence, it is held to be not applicable in the facts of the case.

(H) T.I. PARADE OF A-38 :

PW 34, Exh.235, Yadi and Exh.236, the T.I.P. Panchnama

(1) PW 34 is Learned Executive Magistrate who has a duty to draw panchnamas regarding Test Identification Parade. This witness has deposed that upon receipt of Yadi, Exh.235 the Test

Identification Parade for A-38 was arranged in his Court and that the witness has identified A-38 stating that she has seen A-38 along with 10 to 15 other persons on the date of the occurrence and that since the mobile phone of A-38 fell down, she is able to identify A-38 as that person.

(2) The witness was cross-examined at length. Certain facts which, in the opinion of this Court, was irrelevant to decide the credibility of the panchnama, was asked to the witness like whether inward-outward registers are being maintained in the office of the witness or not, how many ways were there to reach the Court-House and that one such way was from the Collector's Office, on the date of the Test Identification Parade the cases in the Court were not listed etc. For the sake of brevity, similar questions were also asked to another Executive Magistrates like PW 35 and 36 which too were found to be irrelevant by the Court.

(3) Further, it has been elicited during the course of cross-examination of this PW that, all the conversation the witness had with the accused, were not written in the panchnama. The accused is unaware as to by which way, the accused and the witness were brought.

In the opinion of this Court, not writing all the conversation in the panchnama is, in no way, bringing any distrust against the witness and that it is not material even if the witness does not know the way wherefrom the accused or the witness were brought. It is indeed not necessary for the witness to know. What is essential is, he should know whether the directions given by him by way of endorsement on yadis

were complied with by police or not. There is no dispute raised in that regard.

(4) The witness has been confronted on the fact that the denial or refusal by the accused, as has been noted in the panchnama Exh.236, for hiding the face or wearing veil (*burkha*) to the police, is not written. It is common that when the accused is in police custody, then to whom else would he convey his refusal, objection or denial to wear *burkha* or to hide his face. It is obvious that it was only said to police. What is important here is that it is not denied, even by way of suggestion, that the accused has not refused or not denied to wear *burkha* or to hide his face.

It is true that the witness has directed the police to hide the face of the accused and that the police indeed could not do this, but then another vital question is, if the accused himself refused to comply the directions how the police can compel him. The direction of the witness was to the police. The refusal or the denial of the accused shows that the police did comply with the direction of this witness. But the accused denied the observance of the same. The denial or refusal is since not disputed, it is clear that the accused did deny and did refuse to wear *burkha* or hide the face.

The police has not rightly imposed physical compulsion on the accused to hide his face or to wear *burkha*. After all, it is the right of the accused to hide or not to hide his face. Hence, in the opinion of this Court, this part of the cross-examination does not bear any fruit. It is rather established that the accused did refuse and did object wearing *burkha* and hiding

his face. Therefore, no fault can be found with the police and that because of the conduct of the accused, Test Identification can never be held to have been failed.

(5) Other irregularities like not writing dates, beside the initial, correction in the date in the Yadi (obviously not by this PW) are all the questions, which can hardly be termed to be irregularity and it in no way affects the credibility of the Test Identification Parade Panchnama.

(6) The witness had admitted that if the police failed to act as per the endorsement on the Yadi, then the Test Identification Parade cannot be termed to have been successful. Generally, it is true but, in the case even though, the police is acting and complying with the directions given in the endorsement by the Executive Magistrate, but the accused is not co-operating or say the accused is objecting to act according to the directions, in the manner in which this A-38 denied or refused to hide his face and to wear burkha, the Test Identification Parade can never be held to be unsuccessful as, it is not non-compliance by the police. The police is required to sincerely comply it which in the case, the police did.

It would be most improper, illegal, unjust and against the principles of equity if, for the conduct or decision, rejection, objection or denial of the accused, the Test Identification Parade is held to have been failed. If such interpretation as desired by the defence, is put into practice, then, no accused would ever allow the investigating agency to arrange any Test Identification Parade and no Test Identification Parade can be successful because the accused would be taking objection or he

would refuse to act according to the direction when the police complies with the direction. Hence, such distorted and perverted interpretation cannot be given to the reply or admission of this witness. On the contrary, in the facts and circumstances of the case, it needs to be held that the police did comply with the direction of the Learned Executive Magistrate given through his endorsement, but it was objected to by the accused and in view of his human right, such an objection, rejection or denial, has prevailed and that the same has been clearly reflected in the Test Identification Parade Panchnama at Exh.236. In fact, the conduct of the accused is such that it speaks for itself. The presumption of proprietary of official act, is not getting rebutted because of the conduct of the accused.

(7) Another important aspect is related to difference in age of dummies. But, in the opinion of this Court, age of the dummies can be in the range of 5 to 7 years difference, but it is important that, they should look nearly equal in their physique.

(8) Another important aspect is related to special identification marks, if any, on the face of the accused. In this case, an attempt has been made to show that A-38 is having special identification marks on his right cheek where according to defence, he had two moles. The witness has replied that whether the moles shown on the right cheek of the accused in the Court were existing on the date of the Test Identification Parade or not, is not known. Another aspect was on the mark below right eye for which the Learned Executive Magistrate has rightly said that while seeing him very closely only, it is visible. He was not sure whether the dummies were such who

had two moles on the right cheek and one mark below the right eye or not.

(9) At the end of the deposition, the accused who was called near the witness box by the learned advocate for the defence to show his moles to the witness, was enquired as to whether he can produce some I.D. proof of the year 2002 if he has, but the accused has stated that he has PAN Card and Election ID but the election I-Card was noticed to have been issued in the year 2007 and the date of issuance has not been mentioned in the PAN Card. Meaning thereby, on the date of the deposition i.e. on 25/11/2009, the witness did not have any I-Card or any other document in his custody to show that the two moles shown to the witness and the mark below the right eye were existing even on the date of the Test Identification Parade or not.

The entire cross-examination on the identification marks of A-38 is found to be insignificant when during the trial the complainant PW 135 could not identify A-38. It is most important to note that if the identification marks were the reasons to identify A-38 during T.I.Parade then for the very same reason or on the very same identification mark, she could have even identify A-38 in the Court. It is therefore, clear that the involvement of A-38 has been linked by PW 135 not for his identification marks of moles, but it is involvement based on overall looks of A-38.

(10) Thereafter, at the end of the trial in the year 2012, the accused has given his written presentation at the end of the Further Statement. Upon perusal of the same, which is at Exh.

2483, it is noticed that the witness has not produced a single documentary evidence to show that he did have two moles and one injury mark below the right eye on the date of the test identification parade. In the circumstances, the only one inescapable conclusion which can be drawn by this Court is that, it is doubtful whether the accused had two moles on his right cheek and one mark below his right eye on the date of the Test Identification Parade or not. If such marks were there on that day, then, the A-38 must be in a position to prove the same by reliable evidence. Moreover, Exh.1851, the face marks register (prepared by the then, I.O. No.3) shows that there is mention of only one mole on right cheek of the accused and not of two moles as suggested to the PW (Para.32), there is no mention of injury mark below the right eye, but there is mention of injury mark on the forehead. In these circumstances, existence of the mentioned marks on the date of T.I. Parade is indeed doubtful. At the cost of repetition, it is to be noted that when PW-135 has not linked identity of A-38 with these marks, it is all exercise in futile.

Non-production of any identity even in the year 2012, is clearly suggestive of the fact that it cannot be held that on the date of T.I.Parade, the accused did have any such identification marks.

Since these specific facts are in the special knowledge of the accused and that the accused has not produced any documentary evidence to prove the same, it seems that the accused has raised a false and baseless defence on record.

(11) It is more so when the act of PW 34 is an official act and

unless rebutted, the presumption is in favour of the prosecution that the Test Identification Parade Panchnama being official act, must have been performed regularly. In light of this, this Court is of the firm opinion that no reasonable doubt whatsoever has been created against the deposition of PW 34. There is nothing on record to disbelieve the oral evidence of PW 34 about the genuineness of the Test Identification Parade.

(12) Exh.236 is the Test Identification Parade Panchnama wherein it is clearly recorded that the accused has refused to wear *burkha* and to hide his face and it is for that reason, the accused was not brought in that fashion. It is also very clearly contended that the Test Identification Parade was successful and the witness has successfully identified A-38.

According to the identifying witness (PW 135), there were 10 to 15 persons with the accused, the mobile of A-38 fell down and for this reason, the witness was able to easily identify the accused. This shows that the identification parade was successful and A-38 has been identified as an accused.

(13) Upon further perusal of Exh.236, on expression of desire by A-38, he was permitted to change his shirt. This shows the conduct of the police and the conduct of PW 34 and it also shows that the hiding of the face and wearing of *burkha* was not complied at the instance of the accused and it is not a fault on the part of the police or any other authority. In light of the refusal, denial or rejection of the accused to hide his face etc., the entire situation needs to be weighed accordingly.

Upon asking by PW 34, A-38 has informed that the family members of the witness (PW 135) showed him by sign to the witness. This is of no importance because, firstly, it is not done by police and secondly, when the accused has refused to hide his face or to wear *burkha*, he is inferred to be aware of the consequences. This remains merely an allegation of A-38 and not a proved fact.

(14) In nutshell, the factors highlighted by the defence of pointing him out to the witness by the relative of the witness, no dummies with two moles on his cheeks and mark below his eyes etc. are of any importance at all and that no reasonable doubt has been created by the defence raising such allegations against the credibility of the PW and the Test Identification Parade Panchnama drawn by him.

(15) This Court is of the firm opinion that Exh.236 is a genuine panchnama of Test Identification Parade and A-38 has been genuinely identified by the identifying witness. No doubt is created in the mind of this Court by any of the cross-examination of PW 34 and through the Further Statement and otherwise and even upon asking by the Court, since the accused has not provided any document which can show the identification marks mentioned in the cross-examination to have been existing on the face of the A-38 in the year 2002, the said defence becomes baseless. Even if it is assumed that this T.I.Parade was illegal and invalid, but then also the substantial evidence of PW 135, of the Executive Magistrate etc. very clearly and conclusively prove the involvement of A-38 in the crime which stands proved beyond reasonable doubt. In light of the above discussion, the Court comes to the following finding :

FINDING FOR T.I.P. OF A-38 :

(a) The T.I.Parade held before PW 34 is credible and genuine.

(b) The panchnama drawn by PW 34 for Test Identification Parade vide Exh.236 is a credible document.

(c) A-38 has been identified before PW 34 by PW 135 on 03/10/2002 as an accused involved in the offence.

(d) The presence and participation of the A-38 proved by PW-135 needs to be viewed in light of the T.I.P.

(I) T.I. PARADE OF A-33 :

PW 35, Exh.239, Yadi and Exh.240, T.I.P. Panchnama.

(1) PW 35 is an Executive Magistrate in whose presence, Test Identification Parade was held, as was requested in Yadi Exh. 239. The police complied with the direction at Exh.239; the panchnama was drawn; PW 200 has identified A-33 as deposed by PW 35 who has further deposed that the accused was a member of the mob and the accused was known to the identifying witness even before the occurrence of the incident; the identifying witness has stated that the accused had his garage at Naroda Patiya and that on the date of the occurrence, the identifying witness was advised by the A-33 to run away from that place or else, the people would attack him.

(2) The witness was cross-examined on the aspect of certain irregularities like not maintaining inward-outward registers, not writing names and addresses of the dummies, having not

read the police manual and the witness has disagreed to the suggestion that there has to be nine dummies.

(3) No part of the cross-examination or the information elicited from the witness is such, which in any manner, creates any doubt against the credibility of the witness and that there is no material on record to disbelieve this witness who is an official witness and who has done an official act.

(4) This witness has brought on record a very vital aspect of prior familiarity or acquaintance between the accused and the identifying witness. No case is made out by PW 200, of the inimical attitude of the identifying witness or possibility of any false involvement of the accused. On perusal of panchnama Exh.240, it becomes clear that name, age, occupation and addresses of the dummies have been written and that the panchnama has been regularly drawn by the witness. PW 200 has, in fact, said that A-33 has advised him to run away and that even considering this sentence, the witness would not falsely rope in A-33. It is notable that, though from the conduct narrated of A-33 by PW-200, it seems that A-33 has either changed his mind or discontinued with the unlawful assembly, as far as PW-200 is concerned, it does not seem to be true. It may be because of his personal relation with PW-200 only. In other cases or qua other victims, this is not applicable as, there are other evidence against the A-33. Moreover, the fact that A-33 was in the mob of miscreants, marching with a sword, etc. do not go away hence, since there is even other evidence against A-33, it is not possible to believe that he discontinued with the unlawful assembly. In nutshell, the panchnama seems to be truthful, the PW 35 is quite credible, considering the

discussion as above, the court arrives at the following finding.:

FINDING :

(a) Exh.240 is the panchnama of successful Test Identification Parade wherein PW 200 has identified A-33 as a member of the mob present on that day.

(b) PW 35 - the Executive Magistrate is credible witness, Exh.240 is a truthful Test Identification Parade panchnama, involving A-33 as having been identified by PW 200 for his presence at the site whose involvement or overt act qua PW-200, is a matter of appreciation or oral evidence of PW-200.

(J) T.I. PARADE OF A-53, 54 AND 56 :

PW 36: Exh.246(A-53), Exh.249 (A-54) and Exh.252(A-56)

(1) Through PW 36, the Test Identification Panchnama successfully identifying A-53, A-54 and A-56, has been proved on record.

(2) This Executive Magistrate has also been cross-examined on the aspect of not keeping inward-outward registers, the situation of the chamber of the witness, the directions of the chamber, the rush of people around the office of the witness. It was suggested that some of the dummies were common in two panchnamas and one of the dummies and the panchas were husband and wife etc. But, all this part of cross-examination has not impressed the Court. The irregularities in noting the age of dummies differently in two different panchnamas should not have happened, but merely that is not sufficient to look at

the panchnama with any shadow of doubt. The Court is conscious about the hard reality that the dummies are not provided to the witness, and he has to depend on his peon etc., in securing the presence of the dummies and in all such processes, these are all very negligible things.

(3) The witness would obviously be unaware as to how the witness who is to identify, has been brought and how the accused has been brought. He should only verify as to whether the directions given by him in his endorsement were complied with or not. It is suggested that though the accused No.53 and 54 have objected against the police for the act of the police to have brought the accused along with the identifying witness, but still the witness has not recorded it, but the same has been denied by the witness. Such suggestions do not seem to be genuine for the reason that after that day of test identification parade until the date of suggestion in the cross-examination, the accused has observed convenient silence, which does not sound to be natural. Hence, this suggestion also does not create any doubt. The witness has been confronted on his knowledge as to whether the accused No.56 was on bail or in judicial custody. The witness has admitted that the dummies were five out of which, four of the dummies and panchas were from Muslim communities and the age of the dummies and that of the accused was not same. It is not clear as to how community of the dummies is relevant and in absence of any material about mandatory need of nine numbers of dummies how the suggestion is relevant. The witness does not know as to when the accused and PW were brought etc. But all these questions do not raise any reasonable doubt about the credibility of the PW since different aspects of the cross-

examination of the earlier executive magistrate have been discussed and to avoid repetition, the same has not been repeated over here. But the fact remains that no information is elicited during the course of the cross-examination, which in any way, falsifies or challenges the genuineness of Exh.246, Exh.249 and Exh.252 all the Test Identification Parades respectively involving A-53, A-54 and A-56. It is noticed that qua all the three accused, the Test Identification was successful; the panchnama drawn by PW 36 also sounds to be genuine and truthful and that no reasonable doubt is created against the credibility of the PW 36, hence the court has arrived at the following finding :

FINDING :

(a) Vide Exh.246, Exh.249 and Exh.252, panchnamas, respectively A-53, A-54 and A-56 have been correctly identified. The three TIP were successfully drawn as the respective accused were identified by the witnesses.

(b) PW 209 has identified A-53 as the man who was seen by the witness in the incident of evening while the accused was in the mob and was throwing stones (overt act).

PW 156 has identified A-54 stating that the accused No.54 was among the mob and was making them to turn back, hence the witness is knowing the accused. (Ultimately, PW 156 has since not spoken about overt act of A-54 in his substantial evidence, benefit of doubt is given to A-54).

(c) A-56 was identified by the PW 219.

PW 219 has identified A-56 as a lady who was giving burning rags to mobs, dipped in kerosene and that she was in the mob in the hutment of Naroda Patiya in the incident of night, which was seen by the witness in the light. Overt act is subject to appreciation of the oral evidence.

(d) The witnesses are very natural, credible and the three identification parades are found to be truthful and dependable one.

(K) CONCLUSION :

The above judgements and the foregoing discussions make it clear that,

(a) Not holding Test Identification Parade is not fatal;

(b) It is not compulsory for the Investigating Agency to hold Test Identification Parade during investigation;

(c) The Court has to decide as to what weight can be attached to the identity in the Court;

(d) Prior acquaintance or familiarity of the PWs with an accused is an important consideration;

(e) The rule of Test Identification Parade is subject to exception, when for example, the Court is impressed by a particular witness on whose testimony it can safely rely upon without corroboration, the Court of fact can proceed

accordingly while appreciation of oral evidence.

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CHAPTER-IV: SANCTION UNDER SECTION 196 OF CR.P.C.

PW-303, 304, 305, 306 AND 309

EXH.2107 TO 2110, 2112, 2115 TO 2117, 2119 AND 2120, 2184 TO 2186

1. Since the offences committed by the accused were of the nature that sanction is mandatory to take cognizance by the Court, the investigating agency has sent its proposal to the Home Department, State of Gujarat, with a request for grant of sanction to prosecute the accused.

2. PW-303 to 306 and PW-309 have dealt with such proposals of different accused and have given sanction orders to prosecute different accused. Hence, for the sake of brevity and since it is found just, proper and appropriate to appreciate the evidence of all such witnesses together, it has been so done.

2.1 PW-303, vide sanction order Exh.2107, has sanctioned to prosecute A-1 to A-22, deceased accused Dalpat, Jaswant alias Lalo, Raju Ratilal, Jay Bhavani and the absconding accused Nepali.

2.2 PW-304, vide his order at Exh.2112, has accorded sanction to prosecute A-23 to A-30 and deceased Guddu.

2.3 PW-305, vide his sanction orders at Exh.2115, 2116, 2117, has accorded sanction to prosecute respectively A-31, A-33 and A-45 to 59.

2.4 PW-303, vide his order Exh.2119 and 2120, has accorded sanction to prosecute respectively against A-38 to 40, absconding accused Tejas Patel and against A-41 to 44.

2.5 PW-309, vide his order at Exh.2184 and 2185, has accorded sanction to prosecute respectively against A-34 to A-37 and against A-60 to A-62.

2.6 No sanction has been accorded to prosecute A-32 by the Home Department.

3. All the above referred prosecution witnesses are senior officers, who were at the relevant point of time working in the Home Department, State of Gujarat. All of them have deposed that upon receipt of the proposal or the request from the Investigating Officer and from the Police Commissioner, Ahmedabad City and other senior police officers, they have proceeded the proposal along with the accompanying documents. After they have studied the proposal and the documents and having examined whether there exists any requisites to accord sanction or not, having applied their mind and having derived satisfaction on the propriety of the proposal, they have accorded the sanction and conveyed their sanction to prosecute by their order in writing to the Investigating Officer as well as to the concerned authority.

3.1 It has been specifically testified by these witnesses

that they have read the material and having found it prima facie necessary to accord sanction to prosecute, they have proceeded with the proposal in the usual procedure, which was described by the witnesses and then the proposal was finally decided after adopting all necessary formalities.

3.2 After undergoing the above referred exercise, the sanctioning authority has accorded sanction to prosecute all the accused A-1 to A-62, except A-32.

4. During the course of the cross-examination, the witnesses were mainly confronted on the aspect that the sanction orders were granted mechanically, were granted without any application of mind, without sufficient evidence, under pressure and influence of the higher officers and that the said sanction orders were issued without going through the material on record.

4.1 All the witnesses have withstood the cross-examination on different aspects. The witnesses were also confronted on the aspect that they were not competent to sign the sanction order and that the notification granting authority to the witnesses, have not been produced. In the opinion of this Court, the sanction order is always under the name of the Governor and that there is no material on record to accept that the signatory witnesses are not competent to sign the sanction order. In the opinion of the Court, there is no need to produce such authority etc. On the contrary, the presumption of regularity guides that all regularity must have been maintained according to the rules etc., in issuing these sanction orders as well.

4.2 The witnesses were also twisted on the aspect that the earlier sanction orders were sent to them along with the material. This court does not see any objectionable thing in sending or receiving the earlier sanction order and in a case when the draft of the sanction order is similar, then also, no reasonable doubt is created about non application of mind of the concerned witness. It cannot go out of mind that all the sanctioning authorities were working in the Home Department and that if, for the similar Crime Register Number any order had been passed, the earlier order for the same Crime Register Number can always be referred to by the authority while giving a fresh order for another accused in the same Crime Register Number. Actually, this seems to be very natural and no doubt is created on this aspect as well.

5. PW-303 was extensively cross-examined. During the course of his cross-examination, it is elicited from this witness that he did receive the statements of the witnesses in the material sent to him. On asking, he has further clarified the names of those four witnesses. The witness has voluntarily stated that before issuing the sanction orders he did read all these materials, including the four statements. The witness has agreed that the slogans and sentences in his sanction order were taken from the complaint.

In fact, this proves that the witness has applied his mind and this part of the cross-examination does not prove that there was non application of mind by the witness.

5.1 As has been elicited in the cross-examination of PW

303, it is true that the Police Commissioner has written a letter to PW-303 with a request to accord sanction. Whereas, Additional Director General has written a letter giving his own opinion that according to his opinion that was a case to grant sanction.

5.2 This Court is of the opinion that if anything is written in the letter of a person who is requesting to accord sanction, then those additional sentences are not material. It is important that it is undisputed that the Investigating Officer has sent his written proposal to grant sanction. The material aspect is, whether the witness has applied his own mind and has he found that there is a prima facie case to accord sanction to prosecute or not. These requisites can very well be seen to have been satisfied in case of all the PWs. There is absolutely nothing on record to doubt any of the witnesses.

5.3 This Court is therefore of the opinion that the defence does not succeed in creating doubt against these witnesses or carving out a case for sanction having not been accorded properly and that there is some material on record whereby presumption of the act to have been regularly performed, gets rebutted.

5.4 This Court is further of the opinion that there is no need for sending all the materials collected by the Investigating Agency but what is necessary is whether there appears apparent application of mind of the sanctioning authority on the material received or not and whether the sanctioning authority is satisfied from whatever was sent to the sanctioning authority or not. In the facts and circumstances of

this case, this appears very clearly on record and that no doubt whatsoever is created. Moreover, in case of A-32, since the authority was not satisfied of the existence of requisites to accord sanction, the sanction was not accorded. This shows that the sanction was not accorded mechanically but, the sanction was accorded after full application of mind and upon deriving satisfaction of the concerned sanctioning authority.

6. Moreover, there is no prescribed format of the sanction order and that the sanction seems to have been given by complete application of mind, after deriving satisfaction and upon concluding that there existed prima facie case against each of the accused. The sanction was accorded to prosecute after all the necessary exercise. It is apparent from the order that the authority has applied its mind and the sanction orders are legal and valid.

6.1 In the opinion of this court, the executive act done by these witnesses of according sanction, was their official act and that the presumption of the official act to have been regularly performed is available to the sanction orders issued by these sanctioning authority. This Court is of the opinion that the presumption in favour of the sanction orders and the witnesses, has not been rebutted at all by the defence and through cross or otherwise, no reasonable doubt whatsoever has been created in the mind of the Court against the propriety, legality and validity of the sanction orders.

6.2 The prosecution has proved the propriety, validity and legality of all the sanction orders by credible, clinching and sufficient evidence.

6.3 It is worthy to be noted that in case of A-1 to A-62 except A-32, the sanction to prosecute has only been granted for Section 153-A of the I.P.C.

Whereas, in case of A-34 to A-37, sanction to prosecute has been granted additionally for Section 153-B, 295(A) and in case of A-60 to A-62, the sanction has been accorded to prosecute under Section 153-B, 295 and 295(A) over and above S.153-A. It needs a note that for the offence u/s. 295 of I.P.C., sanction is not necessary as is clear from S.196 of Code of Criminal Procedure, 1973.

6.4 This Court is therefore convinced that the sanctions have been properly, legally and validly accorded.

7. There is discrepancy in the sanction orders which is obviously based on discrepancy in the proposals. The SIT ought to have sought for sanction to prosecute u/s. 153B and 295A of I.P.C. for the A-1 to A-62 except for A-34 to A-37 and A-60 to A-62. The SIT has failed here.

8. In light of the foregoing discussion, this Court is of the opinion that the sanction has been accorded for majority of the accused to prosecute under Section 153-A of I.P.C. whereas, in case of certain other accused sanction to prosecute has been granted even for additional Sections like Section 153B and 295A of I.P.C.

FINDINGS :

A) No sanction has been accorded to prosecute A-32 under any of the sections.

B) For A-1 to A-62 except A-32 and for certain deceased accused like Dalpat, Bhavani, Guddu etc., and for the absconding accused Tejas and Nepali, the sanction to prosecute under Section 153-A of I.P.C. has been granted by the Sanctioning Authority.

C) In case of A-34 to A-37 and A-60 to A-62, sanction has also been accorded to prosecute under Section 153-B and 295-A of I.P.C., in addition to Section 153-A of I.P.C.

D) All the sanction orders are held to be valid, proper, lawful and with application of mind of the Sanctioning Authorities.

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CHAPTER-V : R&P OF C-SUMMARIES FILED AT THE COURT OF METROPOLITAN MAGISTRATE

(EXH.1776/1 TO 1776/24)

PW 263 was summoned to produce the record of learned Metropolitan Magistrate Court wherein numerous 'C' Summaries were filed by the Crime Branch which were filed during the tenure of the then I.O. Shri S.S. Chudasma. These 'C' Summaries were filed for many of the complaints. Along with the material certain statements, certain xerox and original printed complaint application and damage analysis forms were tagged. 'C' Summaries were filed on the ground that the complaint has been lodged by the mistake of fact. This was

perhaps with reference to the fact that many complaints have been merged in the I-C.R.No.100/02 and others. About 24 R&P of C-Summaries have been summoned up which all have been exhibited as Exh.1776/1 to 1776/24. Some of such C-Summaries are worth discussing to know the kind of insufficient investigation done to highlight that this is a fit case to adopt the practice of sufficiency of one reliable PW to bring home the guilt, the strong circumstances pointing to the involvement of the accused right from the year, 2002, in the serious offences committed in the riot including of murders, slitting stomach of a pregnant woman, etc. gets confirmed even through this record.

(a) Exh.1776/1 :

Upon perusal of the record of this C- Summary, it seems that on internal page No.29, a complaint which though typed as Salim Rahimbhai Shaikh is in fact of his father Rahimbhai, as after reading the contents of the entire complaint and upon perusal of the statements and the testimonies of PW 217 & PW 218, it appears that the name of the complainant whose complaint is on internal page 29 and 32 is Shri Rahimbhai Shaikh. This Shri Rahimbhai Shaikh seems to be father of PW 217 & PW 218. This complainant is complaining about the murder of his wife named Rabiyabibi. In this complaint he has, in specific, alleged that the rioters pour kerosene to burn her alive and then after properties of Muslims were ransacked and looted by the said members of mob etc. He has in specific alleged that A-41, A-44, A-22, A-52 and deceased Guddu and Bhavani were the members of this mob of miscreants. He has further alleged specifically that A-52, A-1, A-10, A-22 A-18, A-44, A-41 and Guddu have preconcorted and

have done all the preparation for commission of this crime at Natraj Hotel. This complaint is though on record and that this complaint though reveals very important aspect of criminal conspiracy, having been hatched by the accused prior to the commission of the charged crimes, it is tagged here with record of 'C' Summaries. Here, the names of the rioters who have committed serious crime of torching the wife of the complainant alive have also been mentioned and that though there is serious complaint about murder to have been committed of the wife of the complainant, the cognizance of this complaint seems to have not been taken. It seems that the office of the Police Commissioner, Ahmedabad has received this complaint and then it was sent to Naroda Police Station. But, as emerges on record, this compliant has then after not taken seriously by the investigating agency either at Naroda Police Station or at Crime Branch. If the complaint would have been even read then also it was clarifying that the complainant is husband of the deceased wife Rabiya and he reveals a very serious cognizable offence to have been committed by the accused u/s.302, r/w. Sec.120B etc. This revelation has gone thoroughly unnoticed. In the opinion of this Court upon receipt of such complaint investigation should immediately be started but as emerged on record nothing has been done, not only that but the original printed complaint of this husband who is telling about the murder of his wife etc. has simply been tagged in the material of 'C' Summary of Ist C.R. No.111/02.

(a-1) PW 217 & 218 are two sons of said Rahimbhai Shaikh and they have also told about the murder of their mother wherein they also include A-52. But it seems that even statement of the father of PW 217 & 218 has not been recorded and the entire original complaint has simply been tagged along

with the material of C Summary of this complaint which complaint is of one Shri Mehboobbhai Abbasbhai Bagdadi (PW-1). This illustration is clearly revealing the kind of the sluggish and careless investigation done at that point of time by the first I.O. and then, by the Crime Branch.

(a-2) This Court is conscious about the fact that at that particular point of time, the police department was busy with law and order situation and that after the incident for days together, the curfew had to be imposed, the disturbances in entire State of Gujarat were ongoing but then not taking cognizances of such a serious cognizable complaint cannot be taken lightly.

(a-3) In fact this original complaint should have been given regular C.R. number and investigation should have been initiated on this complaint then much fact could have been unearthed, which could have been able to throw light on the investigation of this particular case.

(a-4) The important point of this complaint is vide this complaint the complainant is giving names of the accused who were involved in killing his wife etc. and then he is also stating about the injury to his son Rashid (PW-218). In a case where the complainant state that 'he does not know anyone in the mob' then complaint can be kept in the material of C Summary if it is related to the incident for which the complaint is sent for C Summary in the Court but, such complaint naming the accused cannot be tagged in the manner in which it is tagged.

(a-5) Here is the complainant who tells the names of the accused who were involved in murder of his wife and going a step ahead he also reveals about the preparation made for

commission of this crime, the preconcert arrived at about this crime along with the place where conspiracy was hatched. This was very very important material for investigator.

(a-6) OPINION :

At this juncture, this C Summary with entire material, which has been exhibited as a record of learned Metropolitan Magistrate Court is useful for the appreciation of the evidence of different witnesses, who have stated about the presence of A-41, 44, 52, 22, deceased Guddu and deceased Bhavani to be members of rioters mob. This complaint also provides a very strong corroboration to the fact that to commit this crime preparation were made and in making the preparation A-44, 41, 52, 18, 22, 1, 10 and deceased Guddu Chhara were involved and that the said preparation has been done at Hotel Natraj.

(a-6.1) Had this complaint of Shri Rahimbhai Shaikh been properly investigated then truth could have been searched on the contents of the complaint. In this complaint, the complainant has named about 8 accused for preparation and preconcert for the crimes which reveals their agreement to do illegal acts and which link the accused and the entire activities of the accused with the conspiracy hatched. In the same way the names of 8 accused has also been revealed by the complainant who were miscreants and who were members of a mob which had killed the wife of Rahimbhai alive by burning her.

(a-6.2) It seems that this Rahimbhai Shaikh has even not been shown as witness in the charge-sheet and as appears his statement was also not taken by the investigating agency.

Without taking the statement of the complainant the complaint has been tagged along with the material for C Summary as if it is supporting document to Ist C.R.No.111/02. In this very material, there is also one more complaint on page No.25 & 27, but then there are many complaints like this which are not revealing the name of the accused. Such complaint have been tagged along with the material of C-Summary but it is not important and it has been observed that many statements of such complaints are on record who are shown as charge-sheet witnesses.

(a-6.3) But, in the humble opinion of this Court what is important in this complaint which is of one Aishabibi Abidali Pathan on page 25 and 27 is that she has stated names of the eyewitness's neighbours of the incident wherein her husband was done to death and wherein her brother was done to death in the police firing. The statements of those neighbours should have been taken. The complaints where names of the miscreants have not been revealed proves date, time, type, site and seriousness of the incident.

(a-7) No offence seems to have been registered for the complaint of Rahim, no complaint number has been given, no investigation has been done, statement of the witnesses have not been recorded and that even in the FIR of Ist C.R. No. 111/02 this complaint has not been treated as part of the complaint of Ist C.R. No.111/02.

It seems that such a serious complaint has even not been treated as an ordinary application. Upon reading of the testimony of PW 217 & PW 218 it seems that the compliant of this Rahimbhai Shaikh viz the father of these two witnesses was genuine. This complaint also supports the complaint of

many witnesses that Muslim women were outraged and raped by the rioters.

(b) Exh.1776/3 :

(b-1) On internal page 33 of this compilation the printed complaint of one Sardarali Rajjabali Pathan has been tagged along with the material for C Summary for the case of Ist C.R. No.127/02. In this complaint, the complainant has given name of A-22 along with his address. This Sardarali has not been examined as prosecution witness as his statement was not recorded and has not been shown as charge-sheet witness also.

(b-2) On internal page 55 the xerox of complaint of Mohammadbhai Abdul Karim Shaikh has been placed on record. In this complaint, the complainant has involved A-2, 22 and 41 along with the fact that represent VHP, RSS and Bajrang Dal wherein even addresses of these rioters have also been shown.

On internal page 61 and 63 the names of A-44, 2, 22, etc. along with the name of the respective association or parties to which the accused belong and even along with their addresses have been on record.

(b-3) In the opinion of this Court, the printed complaint where the names of the accused have even been mentioned should have been taken cognizance as it reveals cognizable offence and after taking the complaint on record, necessary investigation should have been followed. Had that been done the truth about the entire offence could have been revealed in still better way. But the investigation agency has chosen not to do so.

(c) Exh.1776/6 :

(c-1) This is the record of Ist C.R.No.162/02. In this printed complaint, witness Kasamali Akbarali Saiyed, resident of Imambibi-ni-Chali has involved deceased Guddu Chhara, A-44, 10 in the crime.

(c-2) Vide Exh.440, death certificate of this complainant has come on record and it seems that for this reason he could not been examined by the prosecution.

(c-3) This is illustrative to opine that there were many eye-witnesses who have involved the accused by their name and by their address, but since the trial could be conducted after about 7 years such witnesses had died and the evidence which was to come through them could not come on record.

In the opinion of this Court, because of such situation, the theory of sufficiency of one reliable witness is to be practiced in the case at hands.

(d) Exh.1776/9 :

(d-1) At internal page 283 and 284 of this record of C Summary for I.C.R.176/02 there is complaint of witness Bilkisbanu Yakubbhai Mansuri who involves A-44, A-33 and others who are not being tried before this Court in the case stating that the husband and brother of the witness were not found.

(d-2) Vide purshis Exh.2566 the prosecution has dropped this witness. As has been mentioned at Serial No.49 this witness has been dropped to avoid repetition. This is, as submitted, with a view that enough PW have involved the two

accused.

(d-3) In the opinion of this Court the fact that such witnesses who have been dropped to avoid repetition need to be considered while deciding whether to apply the practice or theory of more than one, two, three or four prosecution witnesses or not as submitted by the defence. The situation prevalent in this case is a peculiar one hence, it needs to be borne in mind.

(d-4) In the opinion of this Court, to decide the need of the number of the witnesses it is essential to keep in the mind such situations. Considering which it has been considered just and proper to appreciate the evidence or to adopt the policy that even one prosecution witness if found reliable is sufficient meaning thereby this Court is to practice the theory of one reliable witness as sufficient to bring home guilt of the accused. This Court is also to give due importance to extra judicial confession of the accused which upon passing the test of credibility shall be acted upon holding it sufficient to hold the accused guilty. If such policy would not be adopted then it would cause serious injustice to the prosecution side and in the peculiar facts and circumstances and in light of discussion for previous investigation no other method would strike the balance. The care has also been taken that since the case is between two communities there should also be a check point of proper and detailed scrutiny.

(e) Exh.1776/10 :

(e-1) On internal page 15 & 16 the complaint of one Hasambhai Abubakar Saiyed is on record. In this complaint, he has involved A-22 & A-44 in the crime wherein he has also

stated that his youngest son Moiyuddin aged about 18 years has been done away by burning him alive by pouring kerosene on him in the riot.

(e-2) Vide Exh.451, the report has come on record wherein it has been revealed that the complainant - father had died.

(e-3) This point has been referred to bring on record that certain witnesses who had died for lapse of years are complainants of very serious cognizable crimes and had they been alive and if would have deposed, through them the truth could have been revealed about their complaints.

(e-4) In the opinion of this Court, for this reason also it would not be appropriate policy or theory to insist for at least two or more than two witnesses to hold the accused guilty as it would be adversely affecting the interest of justice. The philosophy of victimology has also gained equal importance. Moreover, in the facts of the case, when so many eyewitness had died and so many were even not found to summon them as PW, the Court need to bear in the mind that had the trial been in routine course then good numbers of eyewitnesses with fresh memory could have been available. This loss to prosecution side is an important factor to adopt the theory of one reliable PW to be sufficient.

(e-5) In this voluminous record of C Summary for Ist C.R. No.177/02 there is also printed complaint of one Usmanbhai Amadbhai Pathan wherein this complainant has involved A-26 & 42 in the crime along with possession of weapons with them.

This witness is not even a charge-sheet witness. In

the charge-sheet name of Usmanbhai Ahmedbhai is mentioned who has not been examined, but the name of this witness is Usmanbhai Amadbhai Pathan.

(e-6) This illustration is quoted to opine that there are many such illustrations wherein either because of lapse of the time the witnesses had died or on account of the fact that the investigating agency was negligent to not include such witnesses who named the accused in the record therefore also it appears that the policy of more than one witness is not appropriate and just policy.

(e-7) In this very compilation of Ist C.R. No.177/02, there is a statement of Asgarkhan Gafurkhan Pathan, husband of Hussainabibi – PW 135, who has given a complaint that his brother-in-law, means brother of his wife, is killed by the mob.

(e-8) Witness Usmanbhai Chhotubhai has involved A-22, 26 & 39 in his complaint, but he has been dropped by the prosecution to avoid repetition. In the same way, witness Fatema Khawaja Hussain and Sarfuddin Mehboobali are respectively involving A-26 & 42. In the same way, witness Mehboobali Abdul Gani Qureshi is involving A-44, 28, 22 and deceased Bhavani and Guddu. But all of them have been dropped by the prosecution to avoid repetition. These illustrations are noted to highlight that the theory emphasised by the defence to keep the policy of atleast three to four PWs, cannot be practiced in the interest of justice.

(e-9) In this Ist C.R.No.177/02 there is complaint of witness Abdul Sattar Ehsankhan who has given his complaint involving A-22, A-14 and A-1 and deceased Bhavani, but his statement has only been recorded for damages.

Witness Jilani Ibrahim Shaikh involves deceased Guddu, but his statement is not on record of charge-sheet.

Witness Shaukatmiya Yasinmiya involves A-44 and other persons of the mob. His statement is only for damages. Witness Abdulraza Imamshah Shaikh is involving A-22, but as is clear from Exh.46 he had died.

Witness Noormohammed Gulambhai Sipahi involves A-1, A-22, A-41 and A-44. In the same way witness Azizbabu Mehmoodbhai Momin involves A-22, A-18 and A-33, but her statement has not been recorded by the investigating agency.

(e-10) In the opinion of this Court, all these are suggestive of the fact that the statements of certain witnesses who involve accused have not been recorded. It is suggestive of the fact that had these statements been recorded the investigation of such a serious crime could have been done in better manner..

(e-11) It cannot be true that these witnesses who gave their complaints involving the accused would voluntarily give their statements only for damages.

This submission for the previous investigating agency is not acceptable. As a matter of fact their statements were recorded only for damages which is focusing the manner in which the statement of the witnesses were recorded. Here it is fitting to note that because of such situation also the PW who have explained before the Court that, "they were telling about their sorbid tales including the participation of the accused by name but the police was inclined only to record their statements for damages" is found to be most credible, probable and full of truth.

The police must be in hurry to make more volumes of statements and to file charge-sheet on time by either collecting the statements or by editing the statements which do not add further burden to investigation, which is possible only if complaints of damages are entertained and encouraged.

(f) Exh.1776/12 :

Mehmoodbhai Mohammad Hussain Budli (Shaikh) has involved A-41 & 44 but had died as is clear from Exh.451. In such circumstances for want of particular amount of the PW if the accused are given benefit of doubt it would be mockery of justice. Hence in this case the best policy is to see 'quality not quantity'.

(g) Exh.1776/18 :

(g-1) Witness Sardarahmed Sarmuddin Chaudhary has given his complaint as is clear from compilation of C Summary in case of Ist C.R. No.187/02 wherein A-22, 41 & 44 have been involved by the witness but he has been dropped to avoid repetition.

(g-2) Witness Abdul Majid Abdul Razzak Shaikh is involving A-2, 44 & 1 whereas witness Zakirhussain Fakhruddin Shaikh involves A-2, but both of them have been dropped to avoid repetition of the evidence.

(g-3) Imtiyazhussain Gulammohiyuddin Momin involves A-22, 26 & 44 who has been dropped to avoid repetition of evidence.

(h) Exh.1776/22 :

(h-1) The complainant, Ibrahim Dawoodbhai Mansuri has involved A-44, A-41, A-22 and Bhavani, this complainant had died as is clear from Exh.873. The neighbour of Ibrahimbhai has given the statement that while the riot, he was residing at Hussain Nagar, but his address then after is not known to him. This Court could lay its finger on internal page-45 of Exh. 1776/22 which is placed on record as Record of C-Summary of I-C.R.No.210/02. On internal page-43 to 46, the xerox copy of printed complaint application and loss-damage analysis form of one Safiyabanu Sabbirhussain Shaikh is found who was residing at Pandit-Ni-Chali, Opposite Nurani Masjid. On the backside of page-45 viz. the loss-damage analysis form, it is contended that,

"My sister, brother-in-law, two children, mother-in-law of the sister and sister-in-law of sister came from Karnataka. Sister was pregnant, whose stomach was slit and the child was thrown out. The sister-in-law of my sister was subjected to gang rape, the children were burnt and even my sister was also burnt."

(h-2) This complaint does not seem to have been given proper weightage as it should have been given by the previous investigator. Neither any assignee officer nor any previous I.O. spell about the said complaint or spell about the result of the investigation of the said complaint. It is even not given the C.R. Number. On perusal of the record, no statement seems to have been taken of this Safiyabanu Sabbirhussain Shaikh nor she is mentioned as charge-sheet witness, but it is clear that this complaint is related to slitting the stomach of a pregnant woman. The name of that woman, place of the offence have not

been mentioned, but it is mentioned that such occurrence has taken place.

(h-3) If the interview of the Sting Operation as far as A-18 is concerned, is seen and if the extra-judicial confession made by A-18 is perused, it is becoming transparently clear that A-18 has given extra-judicial confession that he has slit the stomach of a pregnant Muslim woman in the riot. As is already known, the extra-judicial confession itself is independent reliable piece of evidence and no support is required to prove the extra-judicial confession when it passes the test of credibility which in the case on hand, the Sting Operation has passed.

(h-4) The witness like PW 142, 47 etc. state about the happening of an incident of slitting the stomach of one Muslim pregnant woman. They have named one Kausharbanu to be the victim of the said offence. Here, again such incident is complained of. The incident of Kausharbanu has been discussed on its merits, but the imprint left out that such depositions of occurrence of slitting the stomach of one pregnant Muslim woman tallies with the extra-judicial confession of A-18 and even it tallies with the complaint of said Safiyabanu Sabbirhussain Shaikh.

(h-5) In light of the foregoing discussion, this Court is convinced that the extra-judicial confession of A-18 cannot be merely tales of heroism, but in fact occurrence of slitting the stomach of one Muslim pregnant woman is reality. The detailed discussion on this aspect is done under the Chapter of Sting Operation where the extra-judicial confession of A-18 has been discussed.

(h-6) In this complaint, even serious complaint of gang rape has also been made which is on the internal page-45 of Exh. 1776/22, which is also deposed by many witnesses, but it is nowhere clear as to what has happened to this Safiyabanu Sabbirhussain Shaikh and why her statement was not recorded. Here, it is notable that many Muslim victims have left the area and even State of Gujarat forever after this riots.

(h-7) It needs a note that when such occurrences take place one by one, its frequency, speed and its plurality is so much that the eyewitness catches an impression of the occurrence, but at times, they may not record all minute details as it takes place in fast succession.

Hence, it may happen that some of the witnesses like PW 142 during their cross-examination, can be put into an awkward box or in an embarrassment for want of exact reproduction of the occurrence, but merely that cannot be taken to be able to question the credibility of the occurrence mentioned by A-18 himself.

It is also vital that what stands proved by the extra-judicial confession of A-18, is also supported by such document.

(h-8) The extra-judicial confession of A-18 on slitting the stomach and of A-22 of commission of rape on Muslim girl Nasimobanu as discussed under the Chapter of Sting Operation in this part of the Judgement reveals the probability of such occurrences on the date of riot.

(i) Exh.1776/14 :

(i-1) In case of Exh.1776/14, which is C Summary of Ist C.R. No.182/02. In this bunch, internal page 21 exhibits a complaint filed by PW 73 - the complainant of Ist C.R.No. 182/02. There is clear involvement of A-1, 10, 41, 44, 25, & deceased Guddu, Dalpat and Bhavani wherein presence and participation in its depth can be seen that of all these accused.

It is sad indeed that the perusal of a printed complaint at Exh.518 and the FIR at Exh.308 have no revelation about the contents in the complaint at internal page 21. It is very astonishing when it is seen that in FIR Exh.308 even the name of the accused have been not written and the void place is left by merely numbering the accused. Even the contentions mentioned in the FIR are not tallying with the contentions either at the printed complaint Exh.518 and or the complaint at internal page 21 of Exh.1776/14. Such illustration are raising serious doubts against the previous investigation which has therefore held as doubtful record.

(j) Exh.1776/18 :

In case of Exh.1776/18, which is record of C Summary of Ist C.R. No.187/02, there is clear involvement deceased Guddu and Bhavani and further A-10, 22, 25, 26 & 44.

(k) Exh.1776/20 :

In the complaint of one Mohammad Salim Abdul Rahim Shaikh who seems to be hawker of kerosene or who was running cart of kerosene involves A-44 very clearly, but it seems that this complaint has not been utilised. This is the record of Ist C.R. No.204/02.

(k-1) Certain complaints though reveal names of the accused

in specific such original complaints are in this record and it is not clear as to whether the statement of this witness was recorded or not. Even if it is assumed in favour of the investigator that during their investigation they found the complaints to be false or the complainants were not found or have not responded etc. then the investigating agency should make such endorsement on those complaints but there is no endorsement on all these complaints discussed in this part.

What have been discussed for Exh.1776/1 to 1776/24 is about the printed complaint applications only which are of the March 2002, soon after the incident. The question comes in the judicial mind that had the previous investigation been done in light of these complaints, it could have given more true picture.

(l) Exh.1776/21 & 1776/22 :

Both of these are respectively C Summaries of Ist C.R.No. 208/02 and 210/02. The complaints in the summaries are respectively involving A-44 and in the complaint of Ist C.R.No. 210/02, A-44, A-41, A-22 and Bhavani.

(m) Exh.1776/23 :

In this C Summary, A-38 is noticed to have been involved which is supporting the deposition of Hussainabanu – PW 135.

(n) It needs a note that the C-Summaries for Ist C.R.No. 115/02, 129/02 and 153/02 could not be traced out as has been reported by the Court of learned Metropolitan Magistrate.

Out of all the C Summaries, C Summary of Ist C.R.No. 278/02 is granted other C Summaries are lying in the Court of learned Metropolitan Magistrate which all have been

summoned over here by the prosecution to prove its case.

(o) Conclusion :

It is to be noted that some of the complaints have been tagged with the material of 'C Summary' of different cases without any investigation. It is even without inquiry of AD for the death reported which should have been done.

(o-1) The complaint of Rahim Shaikh for the murder of his wife and the complaint at Exh.1776/22 should have been properly investigated as they seem to be eyewitnesses of the mentioned offences.

(o-2) It is not on record as to how the applications on the record have been dealt with by the investigating agency. All these applications, should have been treated as complaints and the offences should have been registered and necessary investigation should have been done. Many of the referred complaints are the complaints of the cognizable offences. Such complaints could not be ignored. Certain statements and complaints have been tagged with different complaints though it has no inter se relationship and that it is nowhere ordered for merging it with the said C.R. number.

The death of Mohammad Shafiq Adam Shaikh is in police firing, whose inquest is shown to be Exh.2021, whose P.M. Note is shown to be Exh.2020, but there is no inquiries for such deaths in police firing as should have been done u/s. 174 of Cr.P.C.

(o-3) All these different record of C-Summary very clearly reveal that there are complaints about the mobs of rioters which involves many many accused against whom the trial is

ongoing, it reveals about torching numerous dwelling houses, shops, looting the property, arsoning the shops, gang rape, slitting the stomach of a pregnant Muslim woman, the mobs with weapons, the time of seeing the mob is somewhere from between 10 a.m. to 11 a.m. of 28/02/2002, the mobs have been reported to giving slogans, shouting, creating hue and cry, doing robbery of households and many many acts and omissions prohibited by law, they were shouting 'kill and cut', they were noticed to be the workers of VHP, Bajrang Dal, of the community of Chhara, community of Sindhis, they had killed several persons by burning them alive, report of death of many many family members of the deceased and about missing of the family members are on record. In many of the complaints the PW have stated that they went to lodge the police complaints but it was not recorded by police.

(o-4) If all the complaints are collectively seen then it is clearly and totally supporting the prosecution case. The complaints which have not been investigated should have been investigated to unearth the truth in the proper manner and to get many many replies which have remained unanswered.

(o-5) If only the complaints where the names of the accused have been given, if are seen then also it becomes clear that some of the accused as alleged must have been kept away from involvement.

Involvement of the named accused by the deceased complainant is very strong circumstance against the accused which was placed before the I.O. but no explanation has been put forth for involving the accused by the complainant. The explanation could have been given in F.S. through cross-examination or even through written presentation after the F.S.

but the accused have chosen silence on this issue.

(o-6) FINAL CONCLUSION ON INVOLVEMENT OF THE ACCUSED :

The name of A-44 in 20 complaints, A-22 in 17 complaints, A-1 in 6 complaints, A-10 in 5 complaints, A-26 in 7 complaints, A-36 in 4 complaints, A-41 in 9 complaints, A-42 in 3 complaints, A-33, A-25, A-52 in 2 complaints, A-2, A-14, A-18, A-28, A-39 in 1 complaint, names of deceased accused Guddu, Jay Bhavani and Dalpat respectively come in 10, 7 & 2 complaints which all, are speaking circumstances against the respective accused. It is clarified that ultimately since these complaints were not investigated, not tried, no chance of cross examining the complaints hence, this conclusion shall not be used against the accused to be decided their guilt solely based on these complaints but, then if through proved fact, if the accused shall be held guilty, then, this conclusion shall certainly be used as a very strong circumstance against the respective accused to tighten the conclusion of guilt of the respective accused.

== x = x ==

CHAPTER-VI : PREVIOUS INVESTIGATION

(a) Introduction :

(a-1) The police record of the statements recorded during previous investigation under Section 161 of the Code are submitted to be unreliable. As a matter of fact, L.A. for the accused have also advanced arguments contending that the

previous investigation is got up, manufactured and concocted. Learned Special P.P. has also begun with the remarks that since the previous investigation is not reliable and proper, there was need to constitute SIT.

Through out the trial, the examination-in-chief was based on the statement of SIT, if it was recorded for that PW.

(a-2) As emphatically put forth by both sides, the entire police record of the statement is suspect and unreliable in the case.

(a-3) The effect of the omission has already been discussed at length and considering the condition of the victims, much importance to non-mentioning of the names in the police statement prior to SIT cannot be given.

(a-4) Whether anybody from the mob was known to the witnesses was a matter which could be revealed by the witnesses on specific questioning, on attaining normalcy in that stress free stage and on regaining faith in the system. This care has never been taken by the previous investigator.

(a-5) No I.O. or no Executive Magistrate seems to have ever coolly and calmly elicit the details from the victims who were badly injured or were under tremendous fear which was needed at that time, but as appears, it was not done in this case.

(a-6) The first I.O. faces numerous allegations mainly for his ill-treating Muslims as there is too much uproar against

him in Muslims of Patiya.

(a-7) The principle of communication is, empathetic listener can only be able to go into the world of the sufferer but as emerged on record, the insensitive and untrained police officer could not do it, hence the victims lost courage and confidence.

(a-8) The ideal I.O. hears the Statement, perceives the same and then put it in conscience form into the context. He should also make re-statement of the text and explain the same. As emerged on record Shri K.K.Mysorewala has done nothing of the sort.

(a-9) As has been held in the citation produced by learned Special P.P. at **Sr.No.35 & 37**, it is clear that irregularity or defect, however serious it may be, has not to be taken as a ground to acquit the accused. It would not be proper to acquit an accused person solely on account of the defects as to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

(a-10) It has also been held that merely because the complaint was lodged less than promptly, it does not raise the inference that the complaint was false.

(b) On 27/02/2002 :

(b-1) The guidance and oral instruction given by the Higher Officers of taking preventive steps on 27/02/2002 has

not been given due attention by Shri K.K. Mysorewala. Not a single such step was taken.

(b-2) Two incidents of burning Muslim Shops on 27/02/2002 should have been taken as signals of series of horrifying and terrifying incidents to occur, but nothing was noted by Shri K.K. Mysorewala. Even no police point was arranged at the place near the wall of Jawan Nagar and where the Muslim Chawls known as Jawan Nagar begins.

(b-3) On 27/02/2002, since the two shops of Muslims were burnt, complaints on record at Exh.2084 & 2085 of I.C.R. No. 96/02 & 97/02 were registered but no proper and detailed investigation was done on it and none was arrested. This job also could have been assigned to some subordinate by Shri K.K. Mysorewala but he remained inactive as emerges on record.

(b-4) After having learnt that twelve of the victim train passengers were from Nava Naroda area, no proper *bandobast* was made or, the informers were not used to know about the ill design, if any, for 28/02/2002.

(b-5) Vide defence citation at **Sr.No.55** it has been submitted that deficient investigation itself gives clear benefit of doubt to the accused but, on perusal of the citation it becomes clear that it has been held therein that inept or deficient investigation could never be sufficient to reject the evidence of witnesses. Their credibility has to be tested on other circumstances like the chance of their presence at the place of occurrence, the credibility of their claim of having seen the occurrence and intrinsic value of their evidence when

they claim to be eye witnesses to the occurrence.

(b-6) It hardly needs to be mentioned that in any case Court has a duty to differentiate falsehood from the truth and to search out the truth. The deficiency in investigation, in no manner, can entitle the defence to claim benefit of doubt.

At this juncture, it is fitting to mention that the citation **No.15** of the prosecution is on the principle as highlighted in **Head Note-B** that the faulty investigation can never be cause to disbelieve the prosecution story. This Court is of the opinion that if the investigation is defective or faulty, the accused cannot be held to be entitled to secure benefit of doubt unless the defective investigation is shown to have prejudiced the accused.

(C) First I.O. : Shri K.K.Mysorewala : (from 28/02/2002 to 08/03/2002)

(c-1) As discussed above the First I.O., Shri K.K. Mysorewala did not take even elementary and routine steps and has totally avoided to do investigation altogether. This Court believes that in all such cases of neglect or may be inefficiency one cannot labelled to have malice or any criminality. In the kind of the cases effective and efficient investigation help searching the truth. Upto 01/03/2002, most of the vital investigation should have been completed by the first I.O. but if the record is seen the entire investigation was conducted in sluggish manner by Shri K.K. Mysorewala.

(c-2) Mr. K.K. Mysorewala has seen the incidents on 27th February, 2002, but then after also he let the grass grow under

his feet.

(c-3) As seems, the first investigating agency wasted lots of time right from 28/02/2002 to 08/03/2002 and even wasted available resources, did not secure scientific evidences, the investigation was carried for the sake of carrying it, the PW 274 was never involved in the investigation.

PW 274, Shri K.K. Mysorewala deposes on having done lots of police firing on the day, at the site. This becomes extremely doubtful when different PWs are deposing that while at midnight they were taken to relief camps there were violent mobs on the road creating hurdles for the vehicle carrying victims to go. At that time, there were four to five policemen in the vehicle and still either by bursting one teargas shell or by doing firing in air those four to five policemen were able to meet with entire violent mobs came on the road which were stopping the vehicles carrying the victims (illustration para 133, PW 73).

If this is the effect of single firing what could be the effect of series of firing as per the claim of PW 274. This also goes with the fact that not a single evidence has been produced by the first IO to show the genuineness of the amount of the firing claimed to have been done by him. The attempt is not to opine that there may not be police firing at all, but it must not be as per the tall claim of PW 274.

(c-4) During the questions 'By Court', PW 274 has simply shrug his shoulders and has blamed the insufficiency in manpower.

(c-5) Shri K.K.Mysorewala was fully aware that the

bigwigs were also present in the mob, but he has not paid any heed to the fact while investigating the crime.

(c-6) While people were flocking the streets, leaving their households inside, Shri K.K. Mysorewala has reported to the Control Room that "everything is Okay (*Khairiyat Hai* - There is peace and happiness in Patiya area) it was like "*When Rome was burning, Nero was playing fiddle*".

(c-7) Near the Jawan Nagar Wall, which was entry point for the Muslim area, no force was deployed by Shri K.K. Mysorewala to prevent any untoward incident. The wall of Jawan Nagar was demolished on that day by the mob due to his lapses.

(c-8) It seems that the entire position of 28/02/2002 was underestimated and the information available was not received by the I.O. revealing the existence of conspiracy. He has handled entire situation without exhibiting any sincerity at least upto sunset.

(c-9) The firing as stated by I.O. Shri K.K. Mysorewala if would have taken place in the amount mentioned by Shri Mysorewala then the incident alleged would never have even occurred, even bursting of tear-gas shell would have its effect as a result of which the gravity of the incident could have been reduced to notable extent, but nothing has happened, which shows that the situation was handled improperly. It is doubtful as far as the number of firing and number of tear gas shells are concerned.

(c-9.1) It is an admitted position that many of the victims died in police firing. This is not natural death. The PW 274

ought to inquire into these deaths in police firing. The relevant documents could have proved the deaths were in police firing by fire arm of the police, but it has not been done as was required under S.174 of Cr.P.C. This lacuna strengthens the possibility of private firing which also goes with admission in Sting Operation of A-18 to have collected 23 fire arms for riot. This collection was on the intervening night of 27th and 28th February, 2002.

(c-10) The decision to impose curfew as is depicted from the entire facts and circumstances, was in fact taken at 10:30 a.m., but the effect of it as seems from record began from 12:20 p.m., this is also another clue which links the insincere approach of the police in the incident on the fateful day.

(c-11) It is an admitted position that none was arrested from the site, had even a single policeman been alert and active, he could have at least arrested one of the person from the mob and if all those who were on the *bandobast* point would have atleast arrested one rioter then also, so many miscreants from the violent mob could have been arrested from the site itself.

The first I.O. did not have proper estimate and assessment of the reactions, which were quite likely.

(c-12) There is nothing on record to show as to what steps were taken for the messages received from control room.

(c-13) The investigation of Mr. Mysorewala is lacking care, analysis, neutrality and microscopic collection of all relevant information.

To exhibit the kind of the careless investigation

panchnama mark-134/65 should be seen wherein the address of the panch No.2 has been kept void. In the same way, the amount of damages has also not been assessed but has been kept void and the most paining part of the entire panchnama is it is signed by ASI Naroda Police Station whose signature, ultimately during the trial, nobody could identify. There are many such statements, panchnamas etc., below which there is designation written as ASI Naroda Police Station which is signed in the manner that ultimately that person could not be found out. All such carelessness resulted into loss of faith on the police in the mind of Muslim community and it is because of such reasons, a perception was developed that the police was trying to favour the other side.

(c-14) Upto 08/03/2002, no substantial steps were taken to arrest the accused named in the F.I.R.

(c-15) A large number of miscreants of both the sides could have been round up, the indomitable mob was out to destroy, but the police was silent spectator which has given an impression that police was with Hindus.

(c-16) The panchnamas drawn by Mr.Surela obviously under instruction of the first I.O. were without presence of FSL Officer, had that care been taken, opinion of the FSL could have been obtained.

(c-17) It seems very clearly that the police has not resisted, opposed or hindered the violent mobs and that way, indirectly the men of mob were facilitated because in humble understanding of this Court, the entry point of Muslim chawls near Gate of S.T. Workshop is such where if the police would have made chain then the mob could not have entered inside.

To that extent the heart burning of the victims for the police to have ignored the activities of mobs seems to be not wrong. This finding is also backed by the most glaring and undisputed fact that every victim stepped on backside of their Muslim Chawls to save their lives on that day and nobody came towards Nurani at the frontal parts. The situation of the chawls are in the direction which begins from west going toward east, all most in a straight line. Now the victims were compelled to run away towards east. None could come out in west. On the west end, highway is there. Here the police and even violent Hindu mobs were present. On the east end, two Hindu societies are situated. The Muslim Chawls lie in between the National Highway and the Hindu Societies. As comes on record on 28/02/2002, all requests made by Muslims to the police for their protection failed hence losing the trust on police, Muslims being helpless ran away, leaving their Chawls on account of the assault, to east. From the east came violent Hindu mobs hence the Muslims died being in sandwich position on account of the fatal assault by Hindu mobs.

The police has rather witnessed inflammatory speeches by the leaders and has witnessed the rioters, running rampage.

(c-18) No cartridges have been found from the site which poise a question on the claim of firing during the deposition of first I.O.

(c-19) The inept and inefficient handling of the first I.O. results into total lawlessness prevailed on that day which results into mass murders which has brought shame for the entire nation and shame to the secular feature of the Constitution of India.

The mobs were riotous mobs and it is quite probable that in view of the communal disturbances, which had taken place, the PW being of minority might be reluctant to then after name the accused. For this position first I.O. is responsible.

(c-20) While the initial stage of investigation the opinion of FSL should have been obtained about probability of such occurrence below the Water Tank at the U-shaped corner, between Gopinath and Gangotri.

(c-21) On 28/02/2002 itself and from 28/02/2002 to 08/03/2002, nothing has been done for recovery of the weapons used by the accused who were miscreants of the mob.

(c-22) Though the accused named in FIR were not absconding, nothing has been done to arrest those accused by the first I.O.

(c-23) Phone calls record of Fire Brigade could have been obtained and the statement of the person of Fire Brigade could have been recorded at the initial stage which is always crucial stage for investigation of such mass crime.

(c-24) Had the accused been arrested at the site, they could have been arrested with the weapons or the kerosene tins in their hands. Had the police been active and sincere on the day at the site of the offence, then the occurrence might not have taken place at all.

(c-25) Shri K.K. Mysorewala states that he had persuaded the Muslims to go inside their house and has tried to disperse mobs of both the communities, but then he is unable to mention name of any one person of the communities who were persuaded by him. This makes the statement full of doubt.

(c-26) According to Mr. Mysorewala and other police PW, the mob was of 10000 to 15000 persons, but it is astonishing that not even 10 out of the 10000 were arrested. Had even a single been arrested the weapon would have come on record. If every policeman would arrest or catch hold of, at least one person then also the accused could have been arrested to a figure of the policeman present there.

Some of the police were armed, it seems that they have not done anything at the site. If the police would have genuinely done any exercise in that case the right signals would have gone to the miscreants.

(c-27) The question remains as to why the stone-pelters were not arrested then and there ?

Police could have caught the members of the mob on whom the police wielded baton/stick or say did *lathi charge*.

The normal mentality of the mob is to run away if firing is done, hence the fact of firing by the police is doubtful. It is even when no cartridge has been found from anywhere.

One police with revolver is sufficient to spread terror signal in many persons.

Police could have cordoned some of the members of the mob.

(c-28) Mr.K.K. Mysorewala said that he ran after the driver of the tanker and ultimately caught him - the said Mr. K.K. Mysorewala did not catch anyone from the mobs, poises a question about his sincerity to maintain law and order situation there.

(c-29) Police photographer and police videographer could have been immediately called upon by Shri Mysorewala or in fact should have been ordered to have been kept present in advance.

(c-30) The panchnama of the site of the offence has been drawn after many hours. This delay destroys many evidences.

(c-31) If the arrest or rounding up would have been done there, the panchnama or memo of the physical state of the accused could have come on the record. Mr. K.K.Mysorewala should have done combing operation in the area, as a precaution, on the previous night to find out suspects on the previous night of the occurrence itself.

(c-32) The statements of all the injured should have been taken in hospital, but only a few were taken there.

(c-33) More help of SRP could have been taken, statement of the SRP personnel on duty could have been taken.

(c-34) As per the police, the patrolling duty was assigned but during patrolling, none has been arrested which shows that the surveillance and vigilance of the police was extremely poor.

(c-35) Test Identification Parade for the accused could have been held.

(c-36) Attempt to find out teeth or remains of the burnt body of the deceased person from the ashes, could have been done which might be helpful for DNA test.

(c-37) No effective preventive measures were taken by Shri K.K.Mysorewala. At the site of the offence, none of the accused

has been arrested or cordoned; no attempts of recovery of any weapons have been made; no effective panchnama of the site of the offence has been prepared; nothing has been recovered from the site of the offence; FSL Officer has not been called upon at the site of the offence in spite of the fact that several persons were done away by severe burns in the offences and the properties of the Muslims have been totally destroyed and damaged. No recovery of the muddamal has been attempted from the arrested accused and even remand was also not sought for the accused arrested on 08/03/2002; no investigation has been carried out to find out source and containers for petrol, diesel, kerosene etc. Statements of nearby petrol pumps, taking its stock registers etc. could have been helpful. The mob has committed theft of gas cylinders from Uday Gas Agency, but there is no investigation on the complaint of Uday Gas which could have been linked with the present complaint. Had it been investigated, even the complaint of the theft of gas cylinder should have been placed along with the material collected by the investigating agency.

No attempt has been made from the treating doctors of victims of firing about the bullet, if any, whether was found from the body or not and no care has been taken to send the same to FSL. Had this been done, the allegations about private firing could have been ruled out if all firing stands proved as police firing.

(c-38) At the right time, which was certainly before 08/03/2002, no attempt has been made to arrange for Test Identification Parade.

(c-39) No attempt has been made to call fire brigade when there was so much of fire all around; no attempts have been

made to arrest the accused whose names have been mentioned in the FIR. If all these faults, carelessness, inefficiency, ineptness is collectively seen, then, the record of this first Investigating Officer is not found dependable, fair and absolutely reliable record.

(c-40) Mr. K.K. Mysorewala had the opportunity of getting an eyewitness and the first hand account of the occurrence given by the victims but no effort was made by Mr. Mysorewala nor there is any explanation for his failure.

(c-41) Instead of taking preventive actions when the tension was rising up in the morning of 28/02/2002, things were allowed to develop till unfortunate occurrence took place. The first investigation was full of lapses, lacking quickness but then, it was not to prejudice the accused, hence, the accused cannot claim any benefit from it. This Court finds that it was not a defective investigation but it was in no way against the accused.

(c-42) The PWs have seriously complained about the fact that their statements were not recorded, their complaints were not recorded at all or the contents were edited to not give effect of certain names of miscreants in the complaints, etc. These grievances are clarifying that the record qua the complaints etc. not reliable. It is obvious that all mischief would be played in recording the complaints and not in drawing inquest panchnamas or panchnamas of the site of the offence, etc.

(c-43) Mr. K.K.Mysorewala has done his duty properly only when so many Muslims were found died at the water tank, when he noticed that several Muslims were burnt alive at the

site and when he took all of them for their treatment at Civil Hospital. There is no hesitation to record that had he not taken timely actions, the death toll of Muslims could have been higher. In fact, his investigation is mockery of the word 'investigation', but taking a balanced view, though prayed for by the victims, he should not be impleaded as accused in the case.

(d) Second I.O. Shri P.N.Barot :

(from 08/03/2002 to 30/04/2002)

(d-1) Many of the gaping holes left by the first Investigating Officer which could have been filled in if the second Investigating Officer would have taken entire task seriously, keeping Constitution of India in front of his eyes (he was quite Senior Police Officer then).

(d-2) When the investigation was with Second Investigating Officer, as a matter of fact, the victims have not been searched and those victims whose statements were recorded, were not recorded after they came out of the grip of terror for which taking them to a psychologist and at the safe environment was a must.

(d-3) Phone calls record of Fire Brigade could have been obtained and the statement of the person of Fire Brigade could have been recorded even at this stage which is always a crucial stage for investigation of such mass crime.

(d-4) The statements of all the injured should have been taken in hospital, but only a few were taken over there.

(d-5) Criminal antecedents of the accused, background of

the accused, statements of the family members of the accused, seizure of the houses of the accused etc. could have helped the investigation, but has not been done.

(d-6) Investigation as to which inflammable substance was thrown, has not been done. It should have been investigated and the crime scene could have been restructured and information about the kind of the inflammable substance could have been obtained.

(d-7) All the complaints under investigation were tagged or made part of I-C.R.No.100/02 wherein all the complainants are of Muslims.

(d-8) It is difficult to make out why Mr. P.N.Barot, the second Investigating Officer has recorded many statements of Hindus. The conclusion is, he was extremely careless even to know that the complainants and victims are Muslims and not Hindus. It seems that he has diverted his attention from the pivotal point of the investigation which should have been about loss of lives of Muslims, demolition, destruction and damage to the properties of Muslims and collecting more evidence for the proposed accused. For the reasons best known to him, he has not shown any anxiety to record the statement of Muslims at the earliest. Rather he has recorded statements of Hindus and wasted much of his precious time. Thus, his investigation was not in right direction. He ought to have made all necessary attempts to give psychological counseling to the Muslims to remove their fear psyche, but he has even not recorded their Dying Declaration on time. Even this Investigating Officer has also not recovered any weapons used in the crime.

(d-9) Even the statements of the witnesses, who

have lost their family members in this ghastly crime, were not verified by him.

(d-10) There was no need for him to draw the panchnama of the site of the offence, but when he has chosen to do so, then it should not have been done without FSL. He ought to have called FSL at the site.

(d-11) This Investigating Officer has also not made any attempts to arrest the five accused named in the FIR, not held any Test Identification Parade, not recorded the statements of the injured, totally ignored and neglected the printed applications given by the victims residing at Relief Camp even though many were revealing serious cognizable offence of murder, rape etc.

(d-12) Nothing in his testimony shows that he has ever visited the relief camps where victims were residing. He has not provided proper guidance to his assignee officer for effective investigation. He has depended on his assignee officer and did not do any vital part of the investigation with his application of mind.

Hence, even this Investigating Officer is not found dependable one and the record of his investigation has also come under shadow of doubt.

(d-13) The V.C.D. prepared by Shri P.N. Barot (I.O. No.2) is the best part of his investigation, but it has no title, no sign boards, it is without clarity of the places shot. Even during the investigation by this Investigating Officer, even though it was possible to collect scientific evidence but even the F.S.L. was not called for. No attempt was made to correct the blunders

committed in the investigation of Shri K.K.Mysorewala (I.O. No.1). The details on the previous investigation has been narrated under the said head. It is not inspiring confidence. It apparently shows inept investigation.

(d-14) This Court is therefore, of the opinion that as a matter of fact, there is nothing on the record which is totally dependable and reliable to have a complete outline of the site of the offences at that point of time. The witnesses have no reason to speak lie about the topography. But, all of them are not able to describe it satisfactorily. It is not necessary to reconstruct the entire topography of the Muslim chawls. Oral evidence of the injured witnesses, victim and their relatives is obviously the best evidence. Secondly, from the site visit certain factors have been noticed by this Court, which has also been discussed under the heading of site visit which too have been kept in mind.

(d-15) He himself has hardly done any active and result oriented investigation. It seems that both the Investigating Officers have not realized the gravity of the situation and, in fact, did not take any step to collect the evidence of the occurrence, which was in clear violation of constitutional and human rights of the victims and which was apparently appearing to be the result of premeditated plans of the accused.

Both the Investigating Officers were either incompetent or had no will to take any necessary steps to inspire confidence in the minds of Muslims.

(e) Third I.O. and all I.O. from Crime Branch :

(1) Shri S.S.Chudasama
(from 01/05/2002 to 19/11/2002 with in between the charge to P.I. Shri Agrawat.)
(2) Shri H.P. Agrawat, P.I.
(from 19/11/2002 to 05/04/2003)
(3) Shri G.S.Singhal, A.C.P.
(from 06/04/2003 to 14/12/2006)
(4) Shri H.R.Muliyana, A.C.P.
(from 15/12/2006 to 21/11/2007)
(5) Shri V.K.Ambaliyar, A.C.P.
(from 21/11/2007 to 10/04/2008)

(e-1) Third I.O. is Shri S.S.Chudasama of Crime Branch who took over the charge from 01/05/2002.

The investigation by both the first two Investigating Officers was very inept, inefficient and that for this reason and for the reason that Shri S.S.Chudasama has to complete much of the investigation work only within 34 days as only 34 days were left to file charge-sheet when he was handed over the investigation, he too has prepared a large team of several assignee officers including P.I. and P.S.I.

All these assignee officers had been to camp and without doing any investigation of the crime, simply managed to make announcement and recorded the statement of such persons whosoever came in response to the said announcement. Hence, the entire investigation by the Crime Branch more or less was a slipshod investigation.

(e-2) The names of the accused revealed in the statement of PW 149 have not been taken ahead and in fact, no investigation seems to have been done on that. In the same way, the statements of other witnesses revealed name of certain accused, but the said statement has not been further

investigated. No proper investigation has been done on mobile of A-38 nor any recovery or discovery is effected.

(e-3) In the charge-sheet filed by this witness, those who should have been shown as absconding, have not been shown so. This witness has also recorded numerous statements through his 18 assignee officers. The entire task of investigation was done so mechanical that blunders were committed in recording the statements.

(e-4) After taking over the charge of investigation the charge-sheet was filed within 34 days by this Investigating Officer.

(e-5) Out of 621 statements filed and out of 390 panchnamas drawn within these 34 days, about 580 statements and 379 panchnamas were practically completed by assignee officers. No doubt they were his assignee officers, but looking to the time constraint, it is a matter of doubt whether he had his application of mind in all the task ? Moreover, the purpose of assigning investigation to an officer of the rank of ACP has been lost as even the second Investigating Officer too had only depended on his assignee officer and did nothing. These figures are only for the statements and panchnama which came on record but there may be many more than this.

(e-6) Some of the statements have even been recorded in presence of the police officials whose signature nobody was able to identify. At times, even Constable has signed as `before him', hence the statement appears to have been recorded before Constable. Thus though on paper the investigation was assigned to ACP, considering the gravity of the allegation, it in fact, has gone to the hands of the Constable.

Hence, it cannot be accepted that the investigation was proper, dependable and was done with all sincerity and sensitivity which ought to have attached to such investigation.

(e-7) In most of the cases, the Investigating Officer has not met the victims. He has done the job of collecting the statements and panchnamas. Absence of malice or mala fides against the victims is not the only criteria, but the investigation should have been fair, unbiased, sensitive, with all seriousness, quick, effective and able to logically connect the accused with the crime. Many of these qualities were sadly lacking in all the three Investigating Officers. But, it is more highlighted on Investigating Officer No.III, during whose tenure majority of the investigation was carried out. Thereafter also, two other Investigating Officers were in-charge of the investigation, who also belong to the Crime Branch, but, no progress was made. The entire bundle was lying in a cool box.

(e-8) It is true that the situation of the curfew and the communal riots continued for about 45 days and during this time, the Police Commissioner has assigned additional responsibilities to all the above referred three Investigating Officers. Even the latter Investigating Officers also had additional responsibilities. They might have also been busy in the law and order problems, but the common factor was that the investigation of all those who have investigated before the constitution of SIT, were seriously lacking sensitivity, seriousness and sincerity, which was very much required for the investigation of such ghastly crimes. The insensitivity was of such a high degree that it has given impression in the mind of the Muslims that the investigation was directed against Muslims and the Muslims were deeply concerned that the

further investigation to be carried out by the SIT under the order of Hon'ble the Apex Court should not be handed over to those two among those Investigating Officers.

(e-9) The picture was so gloomy and sad that the complaints of the Muslims were not taken when the Muslims were giving names of certain accused as perpetrators of crime. Muslims were even indirectly threatened from filing complaints against certain accused. It seems that the entire negligence, lighter attitude, carelessness in the investigation, insensitive attitude towards victims and their agonies etc. all was surely aimed at to see to it that at the end of the entire investigation if not all statements, then at least of majority witnesses should be saying that, "they do not know any member of the mob". This cannot be accepted by any prudent person as it is impossible that the accused, though belonged to the same locality, are not identified by the victims of the crime. Be that as it may be, but the facts remained that the investigation done before the SIT was constituted, does not inspire the confidence of the Court as far as the fairness, faithfulness of the record etc. is concerned. This could be in an anxiety to see to it that certain bigwigs should not be involved in the crime.

(e-10) Few illustrations are given to show the quality of investigation carried out by the previous investigating agency.

(a) PW 236 has deposed and this Court has reason to believe it to be true that on 12/03/2002, he went to Naroda Police Station to register his complaint, but since he has given name of A-37, the police station refused him to note down his complaint and he was told that "*You do not know Mayaben*". "*You better get the panchnama of your house and do not indulge into all such affairs, otherwise you will*

be facing difficulties." Thereafter, this witness was left with no choice but, ultimately, he made second effort on 09/05/2002 when in fact, the panchnama of his house was drawn. At that time also he went to Naroda Police Station but his complaint was not taken by the Naroda Police Station.

(b) At the Naroda Police Station, as stated by the PW, the witness was given reply that, 'the complaint would be recorded at the Crime Branch'. The witness stated his grievances, including the names of the miscreants and their participation at the Crime Branch, but only selected part was written. This Court has no reason to disbelieve this. It is for the reason that A-37 was too tall in public life and in political life, in comparison with these very small labour workers, who had to struggle very hard to get their daily livings.

(c) PW 104 was admittedly a rickshaw driver in the year 2002 but his occupation has been written as tailoring work. This shows how carelessly and how without any involvement the statements were written only to rise the figures of the statement.

(d) The son of PW 151, Shoaib admittedly was of 20 days in the year 2002 and that obviously no statement could have been recorded of this infant child of 20 days. But still, in the material collected by the investigating agency, there is even a statement of this 20 days' old child showing his age to be 20 years. This illustration shows the statements were also written in self-styled manner.

Many PWs like PW 144 etc. have stated that what was

stated by the witness, was not written by the police and that police was avoiding writing many facts.

(e) Numerous statements, on the face of them, appear to be only statements of damages. Hence, it is clear that the entire focus of some of the assignee officers was only on recording the statements for damages for which no fault can be found with the witnesses. Using these statements, the witnesses were being put in embarrassing position by the cross examiner as if the witnesses have spoken lie.

Some of the PWs have clarified that when they were trying to give details about the crime or violence, they were advised by the police to be interested only in getting compensation of loss or recovery of loss, nothing beyond that.

(f) In the statement of PW 176, the date of 11/02/2002 has been corrected by white ink and overwritten the date to look it as 11/06/2002 or 11/07/2002 as can be seen.

The attempt is only to focus that some parts of the statements were reduced into writing by the police and some parts of the statements were ignored, though stated by the witnesses, and in most of the cases, creation of record was given more importance than discovery, search or establishing the truth which should be the real aim of any investigation of the crime.

(g) Though, according to the prosecution case, the previous investigation was either done by the Investigating Officer himself or by his responsible assignee officers, but during the trial, it has even been noticed that the statements

were signed by Constable, ASI, writer and even some signature have remained of unknown person. If this is not a mockery of the word 'Investigation of Crime' then what else can it be named.

(h) PW 136 is Mr.Mansuri. It cannot be believed that even though one is Mr.Mansuri, one would have told his surname as Pathan to the police while the police was recording statement.

This witness, in paragraph 21 of his testimony, clarifies that he has not told his surname to be Pathan, but while the police was recording the statement, since the person whose statement was recorded prior to him was Mr. Pathan, police had mechanically written his surname also as Pathan. The witness had added that at that time, police was extremely in hurry and they wanted to complete all work of writing with great speed.

This illustration exhibits how, at times mechanically and without any application of mind and only to increase bundles of the statements, police was doing its so-called investigation. This illustration further exhibits that in many cases police was not even spending a single minute in hearing name, surname, address of the witness. Hence, it is out of question that the police would have invested anytime in eliciting any information about the crime, or discovering truth etc.

(i) Moreover, this witness during the course of his cross-examination, has given many voluntary statements stating that police was not hearing the witnesses and were writing the statements according to there will and whim.

This Court is inclined to believe the version of the witnesses to be true, for the reason that in case of almost every witness, police has repeated the same tune and has placed in the mouth of many witnesses that "*they do not know anyone in the mob, the mob was about 15000 to 20000 persons*". Certain monotonous sentences in the statements prompt that these are not the statements recorded genuinely as were spoken by the witnesses or in the words of the witnesses.

Some of the witnesses have stated that the police was asking only name, address and remaining material they were writing. In the facts and circumstances of the case and in view of the figures of the statements written during 34 days by the crime branch before filing of the charge-sheet, this part of the version of the witnesses seems to be full of truth.

(j) This Court does not propose that in all the statements, it must have so happened, but at least in some of the statements, police seems to have adopted this short cut.

(k) In the statement dated 09/05/2002 of PW 143, the date of occurrence has been shown to be 28/05/2002. This could be the slip of pen, but then, the fact remains that if the statement would have been read over to the PW, he would have certainly stated that the date of the incident is 28/02/2002 and not 28/05/2002.

(l) Many witnesses like PW 162 (at para 40) have stated that the police was not interested in noting down the details of what the Muslim victims were giving of the crime. Police was not inclined to take on record certain names. The

Court is not sitting in Ivory Tower and it is fully aware and conscious as to what kind of devices and tactics are being played in hiding the real culprits, and more particularly when that real culprit is VIP, on the books.

(m) PW 167 has stated in his testimony that he resides at Street No.1, Hussain Nagar for about 25 years. If para 29 is seen, it becomes very clear that the slip shot manners adopted by the previous investigators has put the witnesses in embarrassing position without any fault of them. It seems that the previous investigators have not bothered to know as to Jawahar Nagar and Jawan Nagar is one and the same, Saijpur Patiya is also written for Naroda Patiya, as these are all alternative words used by these previous investigators without even hearing what address the witnesses give of their houses. It seems that the entire area has been referred more as Jawan Nagar or Jawahar Nagar or Jawan Nagar Na Chhapra (roof), as a short cut, without taking pain that there are different Muslim Chawls and in those Chawls, Jawan Nagar and Hussain Nagar are situated and both of them are different. May be, all such hush up was done by the previous investigators as, at that time, they were facing unprecedented burden of work and that they must not have any intention in doing so. This is merely to place on record what an embarrassment the witness has to undergo when misusing this in the open Court. The cross examiner wanted to project the witness as liar projecting that he even lies on his address also.

(n) PW 171 was fair enough to state before the SIT, expressing his surprise that though in his statement on

12/05/2002, he has not given the names of two more accused, he is surprised as to how the two names, over and above the name of A-22, have been inserted in his statement dated 12/05/2002. The witness has fairly stated before the SIT that he has not seen the two accused named in the statement dated 12/05/2002 who is over and above Suresh Langda and Guddu Chhara.

(o) The surname of PW 183 is admittedly Shaikh, but as is clear at para 20, in spite of this fact the surname of the witness was written in the statement dated 13/5/2002 as Saiyad which, the witness has learnt while the summons was served by this Court to the witness to depose. This illustration also highlights lack of due care and the probability of having adopted unhealthy shortcuts by the Crime Branch to make a show that the investigation was done in the speediest manner. It is true that there may be slip of pen as well, but had the statement been read over to the witness, at least he could have corrected the slip of pen. Hence it shows that the statements were never read over to the witnesses and their names were also not written properly and with due care.

(p) PW 186, admittedly is residing in Pandit-Ni-Chali for last 33 years. But still however, in her statement dated 12/05/2002, her address is shown as Kashiram-Mama-ni-Chali, Saijpur Patiya. No witness can ever say wrong address. Hence, it is clear that the address of somebody else is written by the police in this statement.

Another interesting aspect is related to one more common aspect in the statement of every witness, but somehow, it has been brought on record in this testimony. In

paragraph 20, the witness has denied that she has stated before the police that, " - - - - *the reason of the incident was on 27/02/2002, in the Sabarmati Express Train at Godhra Railway Station - - – - were burnt alive*." Hearing and seeing the witness, this Court is convinced that the witness might not have said what is written in the name of the witness. This is focusing the fact that most of the statements of the previous investigation or most of the facts in the previous statements are written by procuring some information and then writing other information by imagination. The address of the witness is written wrongly by the previous investigator which again confirms that this is not completely reliable record and it is better not to take aid from the previous investigation to understand the prosecution case.

(q) PW 188 is an important witness, who is an exception in the kind of the witnesses this case has. This man is one of the rarest who is educated and is working in the governmental organization viz. S.T.Corporation, whose communication skill, exposure and ability to present and mustering courage would always be better than the usual kind of victims of this case.

Vide mark C/1, at the instance of defence, the printed complaint - application seems to have been filed by this witness on 05/03/2002, has been brought on record as has been noted below para-111 of the testimony of PW 188. It is clear that this witness has clearly involved Jay Bhavani, Suresh (A-22), Pappu (not being tried), Bipin (A-44), Manoj (A-41) in the crime. It is very surprising that this complaint has not been given Crime Register Number by

the first investigator Mr. Mysorewala, second investigator Mr. Barot and even this third investigator, Crime Branch. It is more surprising that the loss-damage analysis form produced by the prosecution is also incomplete. His statement was certainly recorded which has to be positively noted, but the complaint which is the reaction, as first in point of time, ought to have been properly preserved and projected on record as a vital piece of evidence which has not been done.

(e-11) PW 156 has mentioned about his complaint in his statement dated 08/05/2002, but the complaint is not on record. It is irony that neither the complaint of the witness who had lost his numerous family members is even traceable nor any attempts were made to record his complaint.

(e-12) It is very clear that until the date of occurrence no house numbers were given in Muslim Chawls but for the reasons best known to the police for giving the numbers to the houses of PW the police did so. In two different panchnamas, two different house numbers are mentioned as some of the PWs had two houses in area. This has confused the victims without their faults which are obviously used in cross.

(e-13) If the case of PW 227 is seen, then though he has stated to have seven family members, but in the statement it is shown as five family members. The addresses and even surnames have also been written wrong. It can safely be inferred that no witness would say wrong name, wrong address, wrong surname and wrong number of family members. Hence this shows that the police was extremely

negligent and when it was not taking the care of noting down the non-incriminating facts, it cannot be expected from the said police that it must be writing all incriminating facts correctly and as was dictated by the witnesses.

(e-14) The previous investigation agency has never taken any injury seriously or else at that point of time when the Crime Branch was recording the statements of different PWs at Camp, they could have even obtain certificates or should have recorded the statements of the treating doctors at the Relief Camps.

(e-15) This Court has reason to believe that in the previous statements the names of certain accused were not given according to the statement of the previous investigator made before the Court and SIT. Hence these are not lapses of the PW. The statement showing the 20 days' old boy to be of 20 years is not to be held as indicative of the fact that the witnesses are lying. It, on the contrary, indicates that the record kept by the police while recording the statements was not correct, dependable and that the entire work was taken very lightly.

The mission seems to make a show of collecting more amount of statements or making more statements, after knowing the names and addresses only and in some cases like this, not even waiting to know the age to be of 20 days or 20 years and preparing a self-styled statement of the infant aged 20 days showing him to be of 20 years.

(e-16) How it can be believed that in all other cases also the statements reflect only genuine account of what the witnesses spoke, as even many of the PWs have disowned much

part of their so called statement hence, the only just and proper remedy to the situation is to hold the record of the statements of the previous investigation even of Investigating Officer No.II to be not reliable.

(e-17) In some of the statements it seems that the description given by the PW was heard hurriedly and halfheartedly and reduced into writing at leisure by the police. It can safely be inferred that the police might not have even invested time and waited for the PW to narrate his entire tale. Therefore, the say of some of the PWs that they have shown and stated on involvement of many accused but police has written names of some of them, is absolutely probable and credible.

(e-18) While opining as above for the record of all the previous investigators, this Court cannot forget to mention the situations prevalent then, number of cases of serious offences were registered on the books and serious incidents were happening every minute, serious law and order threat was faced by the police. It was practically impossible for police to elicit all detailed information from the victims at that time. It is obvious that in such a situation whatever the strength of police force is there, it is found less looking to the workload. Hence, it is improper and unjust to impute any malice or mala fide in police or any bias for Muslims.

(e-19) In this country, it is a matter of common experience that at times, police notes what police thinks it proper to note to establish the prosecution case and police do not always record every such thing which comes in the form of narration

of a particular incident. Hence, the PW who states that even though they have stated before the police but police did not record it, sounds very credible.

(e-20) It needs to be recorded here that, it really appears to be extremely clear that the crime branch has indeed not recorded the statements of any of the PWs in the manner as stated by the PW. In the facts and circumstances of the case, it is extremely clear that the statements of different PWs are not accurate record of what the witness has stated before the police.

(e-21) It is not proper for the Court to mechanically accept what the police officer recording the statement states, by disbelieving what the person concerned suggests in that regard.

(e-22) Investigation as to which inflammable substance was thrown, has not been done. Had it been investigated and the crime scene could have been restructured, information about the kind of the inflammable substance could have been obtained.

(f) GENERAL OBSERVATION ABOUT THE PREVIOUS INVESTIGATION :

(f-1) Inspite of clear, unambiguous and consistent version of the witnesses against the previous investigation, the substantive evidence before the Court cannot be disbelieved on the ground of so called omission or contradiction from the previous statements and if the same is doubted only on that ground, it would be an unjust approach.

(f-2) It is a case of communal violence and false implication could be the motive is what the submission of defence is, in the fact and circumstance of the case, this Court is to separate truth from falsehood which would serve the purpose. Hence, accepting it would create supremacy of police record over the evidence before the Court and specific facts against the general philosophy, therefore it is held that in this case, cause of justice and equity demand to believe the versions of PWs before the Court keeping in mind, the record of further investigation by SIT to an extent it is reliable for all the purposes, including omissions and contradictions also.

(f-3) It was a panicked situation for all including police. The police force is not trained to meet with such a situation; Police force also had its own issues, including facing shortage of manpower, over pressure of work all the while which, at times, transforms human being with vibrant hearts into machines, like the pressure faced by the Investigating Officer No.III to file charge-sheet within stipulated time of only thirty four days, when major investigation was to be completed, which is one such illustration.

(f-4) Even after pondering over all the problems faced by the police, the special fact does not become colour fade, that the sincerity, sensitivity and more importantly the desire to do proper investigation was missing in the previous investigators and the attempt not to include names of certain accused in the crime was constant and common for all the previous investigators including all the I.O. of Crime Branch.

(f-5) This weakness or overshadowing cannot be labeled as participation of the police in the criminal conspiracy hatched by the accused. Every weakness is not criminality. The victims have tendered an application to implead the police as accused which is not found entertaining one.

(f-6) It cannot go out of mind that it is undisputed that the Investigating Officer No.I has taken the injured to the hospitals on that night of 28/02/2002 and that he reached to the horrifying scene of water tank first of all and had saved many Muslim lives.

(f-7) The Investigating Officer No.III has, dealt with the record of 'C Summary', all of which have been produced vide Exh.1776/1 to 1776/24, wherefrom many supporting material has been quoted in this judgment.

The first charge-sheet was filed on time by I.O. III, it is during the tenure of this Investigating Officer that help to Muslims was given by issuing necessary yadis for Postmortem Report of their deceased relatives etc.

(f-8) Everything what is not reliable is not necessarily done with criminality within.

(f-9) Judicial mind is aware that the possibility of the victims to have tied their tongue on account of fear, also cannot be ruled out. However, in that case also, the police record is not genuine and is not free from feared statements, hence is not true and therefore also not dependable.

(f-10) Giving undue importance to the statements of previous investigation is, as if the pre-trial statements would be decisive and conclusive rather than the evidence before the Court and that too, when the accuracy of the pre-trial statements or the pre-trial record, is clearly and certainly doubtful.

(f-11) The effect of omission to name a culprit before the police would vary from case to case and for appreciating the real significance thereof the entire evidence in the case and all the relevant circumstances should be taken into consideration. In this case while doing the said exercise it is clear that the previous investigation is not dependable.

(f-12) Mr.M.T.Rana gives plausible explanation for the insufficiency in the investigation and has rather established that the police could have done many more things, but has not done.

(f-13) The investigation carried out by all the agencies, other than the SIT, was most unsatisfactory and that the same lacks all sincerity and sensitivity. Hence, it is more advisable not to depend on it to decide credibility of the PW.

(f-14) Upon appreciating various factors, this Court is of the firm opinion that authenticity and accuracy of the police record of the statements under Section 161 of the Code in this case as far as previous investigation is concerned is not at all reliable.

(f-15) This Court is conscious about the situation then and

is not imputing malice in the irresponsible conduct of the previous investigators for the reasons that :

(1) Number of cases of serious offences were registered on the day and serious law and order problems were faced by the police.

(2) It might not have been possible for the police to make detailed inquiries with the witnesses and try to elicit detailed information from them about the crime.

(3) Mental and physical condition of the injured witnesses makes it impossible to expect that they would give minute details of the occurrence, of their suffering, agonies and about even all the perpetrator of the crimes.

(4) A proper probe might not be possible nor even possible to maintain an accurate record of what the witnesses said.

(5) Both the learned Special Public Prosecutor as well as the learned Advocate for defence have submitted that the previous investigation is not proper and reliable and still L.A. for defence argues on omissions and contradictions relying upon this.

(6) The oral evidence of the witnesses establishes that the statements were not read over to the concerned witnesses. As revealed by the PW, it seems that one of the reasons could be that the then investigating agency has not written the statements of the witnesses as were given.

(7) The language or expression of the witnesses was admittedly not Gujarati hence failure to read over the statements is also one of the reasons for which honest and sincere record was not made. In reality, it seems that no statement was properly recorded.

(8) The victims, as can be seen from the record, were in a state of shock, terrorized condition, frightened and have almost accepted that there is no safety or security for them and that there is none who could stand by them hence their tongue was bound to be tied.

(f-16) Moreover, if the police record becomes suspicious or unreliable, then in that case, it loses much of its value and the Court in judging the case of a particular accused, has to weigh the evidence given against him in the Court, keeping in view the facts that the earlier statements of the witnesses, as recorded by the police, is tainted record and has no great value as it otherwise would have, in weighing the material on record as against each individual accused.

(f-17) No importance can be given to the so-called contradictions and omissions when the authenticity or the reliability of the police record is itself in doubt.

> "In the case of **Dana Yadav**, the Hon'ble Supreme Court had occasion to discuss, *"there could not be an inflexible rule that if the witness did not name an accused before the police, his evidence identifying the accused for the first time in the Court cannot be relied upon."*

(f-18) Failure to give particulars or name in such kind of cases, is not material from which adverse inference can be drawn.

(f-19) The investigation suffered from lack of thoroughness and quickness. As a result, statements of the witnesses were recorded in a most haphazard manner, like the team of Investigating Officer No.3 has recorded numerous statements within 34 days.

(f-20) The contradiction in the statements of the concerned eyewitnesses recorded by the previous investigating agency, as compared with the statements recorded by the SIT, should not be allowed to affect the credibility of those witnesses because it is clear that all the previous Investigating Officers did not faithfully record the statements of those witnesses.

(f-21) Many matters of importance and significance to the case were omitted. There are many weaknesses in the previous investigation all of which suggest to hold that this is not reliable investigation.

(f-22) One cannot reject reliable testimony before the Court with reference to that very record which, this Court has condemned as unreliable.

(f-23) The contention that the previous investigation of 2002 and of Crime Branch were not efficiently done and it is defective and halfhearted, has found favour of this Court, but the defective investigation has not affected the accused in any

manner which is an important criteria to decide its effect on the accused and more particularly, to grant benefit of doubt to the accused from that.

(f-24) No doubt, it was an elephantine task to investigate the kind of crimes, but then it cannot be believed that the Senior Investigating Officers, having experience, do not know what should be the priorities in such kind of investigation. But, it seems that they must have been over-shadowed by some element. Investigation should be free, fair and autonomous, but here it seems to have been over-powered by someone.

(f-25) The investigation done previously by the investigating officer other than the SIT has been mainly questioned during the cross-examination. This Court has already held that the investigation is not reliable and since the investigation is not reliable and the record kept by the police is not reliable, the same has already been looked with doubts, but then the bona fides cannot be said to have been challenged by any point in cross-examination. What has only been proved is that the record kept by the police by recording statements of witnesses is faulty. In light of this discussion, the judgment cited at **Sr.No.78** of defence has no application in the facts of the present case where, statements are doubtful but, other formalities like drawing panchnamas, writing yadis, etc. are not doubtful hence, it cannot be said that the bona fide of I.O. on every aspect is doubtful.

(f-26) **AIR 2010 SC 1738** in the matter between '**State of UP v. Ram Sajivan** is having some similarity in facts. The cited case arose from the conflict between upper caste and lower

caste wherein the fear psyche and its impact has been discussed which is also applicable in the fact of the case on hand. Head Note-A thereof is relevant, which reads as under :-

> *(A) Penal Code (45 of 1860), S.300 - Evidence Act (1 of 1872), S.3 - MURDER - EVIDENCE - WITNESS - Witness - Unnatural conduct - Multiple murder case - Witness one amongst persons who were abducted, taken to river killed and thrown in river one by one - Witness though seriously assaulted reaching river bank alive - Failure of witness to give names of accused in fear psyche - Not unnatural - Cannot be ground to disbelieve testimony. (Para 31)*
>
> *At paragraph 32, what is written is also applicable to the case on the hand " - - - - In a genocide and massacre which was witnessed by him, wherein all his seven close relatives including his wife were killed one after other in his presence and were thrown in the river Ganga, his escaping the death was a miracle. Hiding and saving his life from a mighty cruel upper caste group was a normal human instinct. Any reasonable or prudent person would have behaved in the same manner. - - - - intervention of someone, the police seriously investigated the matter and he was brought to his village Lohari under police protection. The delay in giving his statement is fully explained and in the facts and circumstances of the case delay was quite natural. In a case of this nature, the witnesses turning hostile is not unusual particularly in a scenario where upper caste people have created such a great fear psyche. The instinct of survival is paramount and the witnesses cannot be faulted for not supporting the prosecution version. - - - -.*

(f-27) At the end of the trial, Learned Special Public Prosecutor Mr. A.P. Desai has emphasised that the entire trial, according to the prosecution, is based on the investigation done by SIT. At this stage, it also needs to be noted that the previous investigation was done by several different Investigating Officers of three different units. The peculiarity of all the three units, which were changed one after the other, is that, at no point of time, the investigation was done by an individual, but the entire unit has investigated.

(f-28) When the first Investigating Officer Mr. Mysorewala was the Investigating Officer, most of the police station officials were made part of the investigation. Hence consistency of aim has never remained, each unit was trying to make more bundles of paper without having the aim of establishing truth. The common factors of all the three units were, all the three have failed to provide proper and effective leadership; all the three did not have aim of investigation except exhibiting bundles of documents and exhibiting the show of investigation rather than going into depth of the case; all the three were lacking sensitivity to the victims, which was the prime need looking to the facts and circumstances of the case; all the three have never thought of the fact that the victims and their relatives must be in tremendous grip of the terrifying and horrifying visions of the crime they have witnessed and which were committed on that day and it is impossible to make them free to speak the truth unless they are psychologically counseled and more particularly, counseled by an experts to cope-up with the fear psyche in their mind of such a ghastly crime.

(f-29) In view of the above situation, all the previous

investigating agencies were not able to secure true, complete, detailed and searching accounts of the commission of crimes on that day, but then, the notable point was none of the investigating units was noticed to have any concern for it.

It is stated here three units because the first unit has been considered as Naroda Police Station which investigated upto 08/03/2002. Shri P.N.Barot and his assignee officers who investigated upto 30/04/2002 was the second unit and then the Crime Branch Unit wherein initially Shri S.S.Chudasama investigated along with his very big team of assignee officers, which is inclusive of Shri Agravat who was many a times in-charge Investigating Officer and thereafter, Shri Muliyana, Shri Singhal, Shri Ambaliyar etc., who all belonged to Crime Branch. So, before SIT took over, the investigation was handed over from Naroda Police Station to Shri P.N.Barot and from Shri P.N. Barot to Crime Branch and then the Charge was taken over by SIT.

(f-30) It seems from the oral evidences that the ground or Medan of Jawan Nagar, including the pitfall therein, was a very big area which was not of the level of road, but only some part of it was low and as the defence has suggested, even if one runs from one end to another, it takes 12 to 15 minutes (PW 52 para-77). It is therefore, clear that in such a large area the big mobs can easily be accommodated. This medan is just adjoining to the Muslim locality.

(f-31) Moreover, the material collected by the investigation does not appear to be complete, un-dotted, dent less and faithful record of the case and it is, to an extent, where the police deliberately skipped writing the name of some of the

miscreants and avoided writing the statements as were spoken by the witnesses.

(f-32) In the opinion of this Court, viewing the totality of facts and circumstances of the case, it becomes amply clear that the previous investigation was improper, lacks sensitivity and the grievances made by different prosecution witnesses, that the previous investigating officer and their assignee officers have not fairly recorded all those contentions and all those names of the accused or miscreants given by the respective prosecution witnesses, are worthy to be believed. The reason is obvious that the previous investigating agency was anxious to see to it that certain names and their participation should not come on the book, even indirectly.

(f-33) This Court is convinced that the statements of the witnesses were filtered while recording the same to keep away names of certain miscreants whom the prosecuting witnesses were naming again and again, from the record. When the prosecuting witnesses have given names of certain persons, they were discouraged and even if they had insisted, then, a filtered statement seems to have been recorded or else it would not have happened that after the SIT initiated further investigation, certain accused who were not earlier arraigned, have then been arraigned.

(f-34) Before parting with, it seems just and proper and in consideration of the entirety of the case on record, to opine that even if it is accepted that in fact the PW has not given names of the accused in the year 2002 in their statements before Investigating Officers - I to III, then also considering the fear and its impact, the panic condition and keeping in mind that the victims must have been in totally numb condition, the

record, in any case, is not true and faithful record.

(f-35) In nutshell, the previous investigation or say the investigation until SIT took over, is not dependable, not reliable, not keeping the faithful record, was prepared in panic condition and was in the impact of fear in the minds and hearts of the victims etc. Hence, it cannot be used to decide credibility of the PWs. In the same way, it cannot be used to decide omissions and contradictions to an extent the PW does not accept or admit it to be his statement. As far as the previous investigation is concerned, the oral evidence of the PW before the Court shall be given maximum weightage as it is safe to act upon the same in the facts and circumstances of the case.

(f-36) After detailed discussion as above on the subject of previous investigation, it has been discussed and decided as to what would be the impact of this previous investigation on appreciation of the evidence and which part of the previous investigation can be relied upon and which cannot be relied upon.

(g) APPRECIATION OF THE PREVIOUS INVESTIGATION IN GENERAL :

1. Investigation of any crime has several common facets like recording the statements of the witnesses, collection of evidence including documents, certain ministerial acts like drawing panchnama, collecting scientific evidences etc. Normally all the above is aiming to unearth the truth and to investigate the crime. It rarely happens that the investigating agency does not do it as a package.

2. Concentrating on the previous investigation in this case following different compartments need discussion to finally conclude the outcome of it.

(a) Recording the statements of the witnesses/victims of the crime.

(b) Recording the statements of the eyewitnesses police officials and officers.

(c) Doing the ministerial acts like issuing yadis to seek permission to draw inquest, drawing the inquest panchnama, drawing the panchnama for identification of the dead bodies, preparation of necessary yadis to hold test identification parade, collection of injury certificates, PM notes, post arrest procedures, drawing panchnamas of the site of the offence, drawing panchnamas for damages suffered by the minority victims at their dwelling houses, at their shops and shooting to prepare VCD of the sites of the offences etc.

3. Background :

(a) It is almost undisputed that including the police witness all the eyewitnesses have stated as their first reaction on 28/2/2002 itself (as is contended in the complaint at Exh.1773 dated 28/2/2002 by PSI Shri Solanki) that communal riot took place at Naroda, the Hindu leaders of the riots were of BJP, Vishwa Hindu Parishad, RSS, Bajrang Dal etc. It is matter of fact that when the riot took place BJP was a ruling party in the State of Gujarat.

(b) A-37 was the current MLA then who was returned candidate from the Naroda Constituency. Some of the Muslim eyewitnesses who are victims and complainants have testified presence of A-37, her active leadership, ingredients for having conspired for the success and execution of rioting on that day and provoking the Hindus to make the riot most successful by violence against Muslims and by attacking the Muslim religious place viz. the Nurani Masjid etc.

(c) No reasonable man can believe that when such a wide scale rioting was ongoing in the constituency and when a larger conspiracy was hatched to do away Muslims, design with a view to settle the score of torching the Kar Sevaks alive in Godhra carnage was made and effected and when inhuman and ghastly offences were committed which has raised the death toll of Muslims upto 96 Muslim in a day, the MLA of that constituency would remain aloof and away from the entire occurrence though she was admittedly in the city. It is not probable when the time span of the occurrence was 9.30 a.m. to at least 8.00 p.m. and even according to the police complainant, it was from 11.00 a.m. to 08.00 p.m. the MLA would not come to the constituency at all. The common experience of the life says whenever such occurrences takes place the political leader do take their stand.

(c-1) In the instant case, A-37 being MLA of the area would either support the Hindus in which case the Hindus viz the miscreants would be tremendously boost up which would add to their confidence and courage in doing away Muslims and ruining their property.

(c-2) If according to defence she has not played the role of provoking Hindus, then there is noting on record to believe that she has played the role of pacifying agent. She has not done anything to stop the massacre, even she has not instructed the police officers to stop lawlessness at the site.

This para needs to be understood in the backdrop of the fact that while for A-37 the cross examination of PW-104 was taken it was suggested that A-37 was present at the site and in fact she has recommended the police to see to it that no inconvenience is caused at Hussain Nagar, Jawan Nagar etc. as it is her consistency (at para 129 & 130 of deposition of PW-104). This role of being a neutral person or making attempt to pacify the situation was not further pursued while taking cross examinations of other witnesses, but then the fact of such acceptance cannot be ignored altogether.

(c-3) It is also not her case that she was neutral. If the fire call occurrence register brought on record by the Chief Fire Officer is perused it is clear that at about 2.15 pm she did telephone to the fire brigade for sending the fire fighter at Sahyog Petrol Pump where occurrence of fire took place. Secondly, she has her own hospital in Naroda where her visit is quite natural. Considering the above it cannot be believed that she would not come to her hospital at all and she has telephoned to fire brigade for the petrol pump at Naroda without being at Naroda.

(c-4) Considering the above discussion, in fact the principle of probability would guide the court that the natural conduct of A-37 would always be to be at site which according

to the prosecution witnesses she was. In light of the appreciation of evidence, in considered opinion of this court and according to counseling of the course of natural event and the principle of probability it can safely be held that the presence and participation of A-37 and her close aides in the riot on that day is the truth which also stands corroborated by the sting operation wherein A-18, 21 & 22 have all stated about a fact that A-37 was present at the site and was boosting up them all.

(d) It is obvious that A-37 would not like to let her presence proved at the site on the record of the case as it can safely be inferred that she must be aware about the consequences of it. Like any other political leader A-37 also must have her followers, her propagators, her canvassers and her aides, she would also take care to protect the skin of all those accused who must be indeed present with her on the date of the occurrence.

(e) This court is not sitting in ivory tower and is conscious to the hard realities of the system. In the system, normally if the police officer knows the desire of the political leader the police would not leave a single stone unturned to give all colours to such desire.

(f) This court firmly believes that the surrounding circumstances lead to only one inference that in this case to respect and to give colours to the desire of A-37 the police took all care to see to it that in all the statements of the eyewitnesses recorded there has to be a common recitation which was to the effect that " I am injured, my family members

died or injured, my house and all property were ruined and looted by the mob of the miscreants but I do not know anyone of them “. This was the safest way out of making the show of investigation and still not booking certain VIPs as per the design.

(g) It is this inference which guides that the involvement shown of certain accused unless supported by the victim should not be taken on its face value. Once the court smells fishy in the affairs of recording the statements of the witnesses, the said statements should be appreciated keeping in mind this background.

(h) It is matter of common experience that when such a heinous crime takes place which takes lives of several and that too in a communal riot the police has to register the case, the police has to make a show of some investigation and the police also would do certain ministerial acts as have been mentioned at para 2(c) of this topic. In all such ministerial acts the favour of bias would have no role to be played. The role begins when incriminating material against individuals gets poured in. As far as the ministerial acts are concerned, it being routine part of investigation no scheming would normally done in that. It is for this reason, it is reflected on record through different PWs as to how the statements were designed by the police to not bring on book several accused.

(i) It is in this background it needs a note that numerous witnesses have voiced their very serious grievances for polluting their statements, for tampering with their revelation and to shape and mould their statements as was desired by the

police. Noting the difference between the status of A-37 and her group and the helpless poor victims of this crime, this court is convinced that the grievances have the ring of truth. It is for this reason this court is not ready to take any contradiction or omission from the statement of previous investigators.

(j) Whatever has been testified by the victims of the crime before the court shall only be tested through the statements of the victims before SIT because while the SIT was investigating no such hostile atmosphere was prevailing against the victims of the crime, passage of time was another solace and the order of Hon'ble the Supreme Court of India to further investigate the crime was the ultimate strength.

(k) The foregoing discussion shows that the presumption of Section 114(e) of the Indian Evidence Act stands rebutted by credible and positive evidence. This court is inclined to believe the statement of the SIT and the testimony of the witnesses before the court and is not ready to look into the alleged and self styled statement recorded by the previous investigators, the aim of which was to conceal the presence of A-37 and her aides and to exhibit the presence of the accused which the police wanted to project.

(l) As is narrated, the official acts performed by the police as have been mentioned at para 2(c) hereinabove, no grievances have been voiced. There is no substantial challenge even offered by the defence which would create a reasonable doubt against the said part of official act of the previous investigator and which can be termed to be rebuttal to the presumption u/s.114(e) of the Indian Evidence Act. This court is however not

taking this part of the investigation viz. the ministerial acts as truthful except when the concerned PW owns it . The point being articulated is, neither the PW nor the defence has rebutted the presumption of the proprietary of this part of official act performed by the previous investigator which also proves that the victims have not complained falsely and have only complained when they are genuinely aggrieved.

(m) One more facet of the investigation (applicable to the first IO only) is that, the police witnesses have also deposed as eyewitnesses as were present at the site of the offence. Such police witnesses are right from armed constable to DCP. It is obvious that all of them shall have to support the stand they have taken right from the beginning. As is clear, the stand they have taken was to conceal the presence of A-37 and other bigwigs and to project the presence of certain other accused. The police officials' deposition has two sides, one is, the fact situation, the violence, the activities of the mob etc. in general at the site and second side is presence and participation of the accused in specific. The first side is unanimously testified by all police officials. The second side is projected in a manner which creates lots of reasonable doubt about the presence and participation of the named accused. As discussed earlier the entire aim of the police was different than unearthing the truth and to investigate the crime. It is not safe and prudent to believe the presence and participation of any accused if it is placed on record by the police witness alone. In other words, when the accused is involved in the offence only by the police, in the facts and circumstances of this case, it is most imprudent to act upon the said version. In such circumstances, the interest of justice demands to grant benefit of doubt to the

accused for whom there is no victim witness to testify about his presence and participation.

4. One more situation needs to be dealt with here wherein the alleged statements of certain accused were recorded by the previous investigator in the year 2002, but for one or the another reason SIT has not recorded any statement of the said witness. It may be because the said witness has not given any statement to the SIT. In the opinion of this court in every case where the witness has not given an application to SIT it cannot be believed that he has no grievances for the statements recorded in the year 2002. The finding of this court even deals with the case of such witness when the court has concluded that as far as recording of the statements of the witnesses are concerned the previous investigation is not reliable. It is therefore thought proper that in such rare situation the statement of the year 2002 shall not be considered for the purpose of contradiction or omission and that the conclusion of the previous investigation to be unreliable is equally applicable to such cases.

5. This court is convinced that the previous investigation is indeed not at all reliable as far as recording the statements of the witnesses, projecting presence or absence of the accused at the site and involvement of the accused by police witness alone is concerned. It is not proved to be genuine and truthful version recorded by the police beyond all reasonable doubt. The presumption of proprietary has been rebutted qua the compartments mentioned at para 2(a) and 2(b) herein above.

6. The ministerial official acts done by the police during the

investigation do enjoy presumption of proprietary except when it is effectively rebutted. This has a reference with compartment of official acts mentioned at para 2(c) herein above.

(h) FINAL FINDING ON PREVIOUS INVESTIGATION :

(a) The statements of witnesses recorded by the previous investigators are held to be unreliable as the presumption of the proprietary of this part of the official act of the previous investigator is held to have been rebutted.

(b) In a case the accused is involved in the crime solely on the testimony of the police eyewitness then such an accused shall be granted benefit of doubt.

(c) All the official acts mentioned at para 2(c) herein above enjoys presumption of proprietary until rebutted.

(i) ABOUT INVESTIGATION OF THE SIT :

[i] Shri V.V.Chaudhary, S.P., (from 10/04/2008 to 08/08/2010)

(1) Much has been said about the previous investigation. It is now only to be stated that when the SIT was constituted six years had already passed after the incident. SIT has also taken some time in the further investigation.

(2) This Court has observed that a uniform mechanical sentence using the same words found in most of the statements

recorded by the SIT was to the effect that "all that has been said in the previous statements (of the year, 2002) is true and correct and the same are read over to me".

Reason cannot accept that this can be a version of every witness as, firstly, if all the statements were perfect and written as stated by the witnesses, then there was no need for further investigation by the SIT. Secondly, it cannot be believed that all the witnesses would speak in the same words and in the same manner. The selection of words to express the similar things is bound to be different but the uniformity of the sentence, its language, the words selected etc. are suggestive of the fact that either the writer of the Investigating Officer or the Investigating Officer himself seems to have such habit of writing this sentence in every statement of the PW. It is probable, it being usually a formal sentence but, it is forgotten that in the facts and circumstances of this case, this statement is not a formal sentence.

(3) While making a sample search, it was noticed that vide Exh.2302, PW 199 has given his application to SIT wherein he has contended in specific that "My statement was recorded at that time by the Crime Branch, but the names of the persons who were at that time in the mob of miscreants, whom I have personally seen and whose names I have given as persons who were cutting and killing people in front of me, their names have been taken out from my such version." This illustration highlights that this witness viz. PW 199 is not one who could have said that all what was written in his previous statement, has been read over to him and it is found to be true and correct. Still, the SIT has written the same uniform

mechanical words in the statement recorded by the SIT. If the testimony of PW 199 is seen and particularly paragraph 25 is read, it becomes clear that how the witnesses who have though voiced their grievances before SIT, were unnecessarily put into embarrassment during cross because of this uniform mechanical sentence used to be written by the SIT whether the PW states or not. Conjoint reading of paragraph 25 of the testimony of PW 199 with Exh. 2302, makes things illuminated for itself. It is opined that the SIT has mechanically written this sentence hence, it being ingenuine, need not be given any importance to decide credibility of the PW.

(4) If para-28 and 29 of the cross-examination of PW 150 is read, it is clear that in spite of the admitted position that this PW has told the SIT that police did not read over to him his statement and that he is unaware as to how the name of Veersinh Rathod was written in his statement of SIT, as is clear at para-29, SIT writer has mechanically written that uniform sentence that, "all that is written in 2002 statement is correct and true".

Normally, the PW would be confused to reply about such sentence. When it is from SIT statement, the PW would be more confused to deny as most of other material aspects have been properly written except such uniform sentence. The PW would be confused as he has in fact not so said to SIT. These kind of illustrations show this sentence is too uniform in the statement of every PW to believe it to have been genuinely spoken by each PW along with the sequence of the same words. It is not at all probable. One more illustration is noteworthy which is as under.

(5) Upon perusal of testimony of IO of SIT PW 327, from para-659 onwards, it seems that there is also the uniform mechanical sentence in the statement of SIT. Now, as far as, this witness viz. PW 209 is concerned, as has been clarified in the note by the Court below para 164 and as has been noted in the testimony of PW 209, this witness has given a specific statement before the SIT to the effect that in her statement dated 11/05/2002, this witness has given name of the accused and has given other details before the police in the year 2002 stating that, who has burnt her mother and sister, but still, however, the police has not written all these things in her statement.

The point to be pondered over is whether the witness who has stated or who has voiced grievances against the previous investigating agency can ever state that whatever was written by the previous investigating agency was true and correct.

This is apparently found to be impossible as the witness who is vigilant enough to voice her grievance against the previous investigator before the SIT cannot say that for the statement for which she has voiced her grievance was true and correct. It is too contradictory to believe. The grievances of the PW about the previous investigation need not be doubted.

The above situation creates doubt on the truth in the statement viz. this part of the statement recorded by the SIT. Hence to the said extent, the SIT statement has remained doubtful otherwise there is nothing to be much doubted about

the SIT statement.

(6) This Court humbly but firmly opines that from the expression of many many PWs, it was becoming clear that they were genuinely not owning the part of the statement of SIT, "All in the previous statement is true and correct."

(7) The illustration of PW-76 is worth mentioning who has admitted in his cross-examination that he is an illiterate man. This witness has been confronted at para-24 that he has not told SIT that even though he was giving names of the accused, the police was not writing in the year 2002.

This Court perceived the situation in this manner that most of the illiterate persons have limited perception and unless being asked in specific and unless concluding and clarifying the affirmative or negative sentence is done, they do not understand the meaning thereof. Since the cross-examiner has asked in the Court, the reply from the witness came that the police was not writing the names of the accused. Had it been asked by the SIT, the witness would have given such reply to the SIT. The witness has replied in the Court because the witness was asked to.

In nutshell, the expression or the disclosure of the illiterate persons should be understood keeping in mind their limitations.

(8) Many of the PWs like PW 147 have also refused to have stated before SIT that all what was written in the previous statement is true and correct, which by itself is self-speaking.

(illustration PW 73, para. 119).

Putting exactly from the cross examination of I.O. of the SIT - PW-327, it becomes clear that about atleast twenty seven PWs. have denied to have said before the SIT about truthfulness and proprietary in the statements before the I.O. prior to SIT.

Eventhough, the SIT Investigating Officer has to uphold statements recorded by him, it does not sound to be true. Instead of perceiving that, these twenty seven PWs. are speaking lie on this mechanical sentence. It would be more proper, just, true and in accordance of principle of appreciation of evidence, to hold that these PWs. have never stated before the PW-327 about correctness and proprietary in the statements recorded by the previous investigators.

These PWs. are PW-1, PW-73, PW-85, PW-104, PW-106, PW-112, PW-115, PW-143, PW-147, PW-156, PW-157, PW-158, PW-173, PW-189, PW-191, PW-192, PW-199, PW-201, PW-203, PW-204, PW-219, PW-235, PW-244, PW-247, PW-248, PW-249, PW-225, PW-261, etc.

(9) EXH.1776/1 TO 1776/24 :- While considering the discussion on previous investigation and from Exh.1776/1 to 1776/24 - the R&P of 'C-Summary', it is clear that wherever the PW has stated that he has not stated in his statement a particular fact or that though the particular fact was stated by him, the police has not recorded the same. The said version of the PW needs to be believed in toto if the Court finds the PW reliable.

Except this, by and large, the investigation of the SIT is without any grievance from any of the PW. After the investigation of SIT several accused have been arrested and have been brought to books.

(10) The bunch of documents at Exh.1776/1 to 1776/24 throw focus on the fact that how inept, careless, poor and inefficient the previous investigation was. It is right from first I.O., until the SIT took over all the I.Os were more or less same. It is in fact mockery of the word "investigation". It is therefore, clear that the previous investigation is not reliable, proper, dependable and hence it does not inspire confidence of the Court.

(ii) I.O. Shri Himanshu Shukla, (From 08/08/2010 onwards)

(11) It has to be kept in mind that SIT had many limitations. Firstly, the lapse of time was of about 7 to 8 years after the occurrence hence, many vital evidence would not be available; the SIT had no opportunity for scientific investigation; the SIT had limitation of collecting evidence; certain Officers of the SIT are not knowing Gujarati language, however, the first Investigating Officer was Gujarati but then he was given additional responsibilities of doing SIT work, over and above his regular assignment. In a limited time the investigation of the SIT being carried out, SIT had very limited scope of collecting documentary evidence. Hence SIT seems to have only collected oral evidence, that too, after lapse of 7 to 8 years. This Court has kept all the above points in the mind while appreciating the evidence.

(j) CONCLUSION ON SIT INVESTIGATION :

The uniform mechanical sentence in the SIT statement by use of common language in all statements is not credible one. This Court do not accept it to be genuine part of the statement of the PW, but it is rather a usual, routine, and stereotyped sentence used by the writer for almost every PW even without so saying by the PW.

It is also common experience with Gujarat Police that whenever further statement or second statement of any witness is written, this uniform sentence is used like writing date in the statement hence it cannot be attached any value. The other parts of the SIT investigation are found satisfactory, reliable and of faithful record.

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CHAPTER-VII: DYING DECLARATIONS IN THIS CASE

(A) PW-130, PW-131 AND ALL THE DYING DECLARATIONS ON THE RECORD INCLUDING WHICH ARE NOW ONLY EARLIER STATEMENTS :

1. PW-130 Smt. U.S.Gohil and PW-131 Shri V.D. Prajapati, have been examined as Executive Magistrates who have recorded the Dying Declarations of different PWs. One more Executive Magistrate Shri K.P.Shah has also recorded one of the D.D., but he has not been examined as a witness.

1.1 PW-130 has recorded most of the D.D. on record but she has, and even PW-131 has recorded the D.D. without consulting the Doctor and without taking any endorsement from the treating doctor. Though normally such endorsement is not sine-qua-non, but then considering the facts and circumstances of this case, considering the then physical and mental condition of many of the witnesses who were struggling between death and life, who were not feeling safe and secured and that since they have not been given any aid or help or psychological counseling which was required, which is known as Grief Counseling and that in the facts and circumstances of the case when the mental condition of the victims was such where they would not normally dare to come out with any fact as during those days to spell out the name of any accused was belling the cat. It is very clear from the testimonies of the PWs that at the relevant point of time the victims of the riot have lost trust in entire system and that considering all such situation it was the requirement of the circumstances that an endorsement of the treating doctor should have been obtained by the Executive Magistrates. But, both of them have not done so.

Be that as it may be, but the fact remains that in some case, the victims were extremely frightened and were much hesitant even to share their feelings with anyone and where the victims were sharing, the police was not recording, as can be inferred by the Court which in any case is clear on record. In such circumstances, when they are not out from the grip of their sufferings and agonies they have undergone, it would be inappropriate to expect that they would tell the

names of perpetrator of the crime.

2. Upon analyzing all the D.D.s on the record, it is clear that most of the D.D.s have been taken on record by the cross-examiner and that the said D.D.s have been exhibited since they were referred by the cross-examiner during the course of cross-examination. The D.D.s have, as such, not been formally proved.

2.1 The Dying Declaration of Exh.846 of one Sufiabanu Inayatali Saiyad is on record but, she has not been examined as witness. Exh.837 is the D.D. of Khalid Noor Mohammed Shaikh but even this declarant has not been examined as witness. Thirdly, one more D.D. vide Exh.854 is also on record but the declarant has not been examined.

2.2 Considering the fact that the declarants have not been examined as witnesses, no comments are required to be made on the same and even there is no submission of it as well.

3. Exh.839 of PW-159, Exh.843 of PW-214, Exh.845 of PW-164, Exh.844 of PW-163, Exh.847 of PW-160 are the D.Ds on record. All the said PWs have not named or involved any accused in their testimonies before the Court. Hence, the appreciation of these D.D. is not required since, they are not different in their version before the Court from what is stated in D.D.

4. It is true that the legal presumption provides that the act of recording the declaration must have been regularly performed. However, the fact remains that in this case, if the

D.D. are not formally proved by the declarant who has thereafter survived, the D.D. cannot be attached any value as on account of survival of the declarant, principally it has reduced to slightly higher than statement before police. On account of the serious irregularity like a serious doubt arises as to whether it is signed by the same declarant or not, presumption cannot come to the rescue of the claimant (defence) who wish to depend on this declaration.

Therefore, this Court unless finds satisfactory reason to disbelieve the oral version of the declarant, the oral evidence of the declarant before the Court is to be given prime weightage.

5. It is true that there is thumb impression at the end of the D.D. but to enjoy the presumption of regular official act, there has to be counter signed as “Before Me” by the Executive Magistrate which is not done on the mentioned D.D. since. In these D.D.s, no endorsement of 'Before Me' has been made by the Executive Magistrates after the signature or thumb impression of the declarer. When the Executive Magistrate has not endorsed introducing the signature, thumb or toe impression, in that case, in the opinion of this Court, the D.D. even does not remain equivalent to police statement. The Court cannot trust such statements as earlier statements of the declarer unless, the declarer admits so. The irregularity committed by PW 130 cannot be taken as usual. It blows the presumption of ‘Official act to have been regularly performed’ heavily.

6. Exh.840 as alleged D.D. of PW-106 has been brought

on record. But it is important to note that PW-106 during his deposition has disowned the thumb impression at the end of the D.D. and that he has stated that it is not his thumb impression. But thereafter, during the course of the cross-examination of the Executive Magistrate (PW 130), the same D.D. was referred and thus it has been exhibited. But, prior to this PW, the declarant has clearly stated the thumb impression at the end of the D.D. to be not of him.

In these circumstances, no weightage whatsoever can be attached to this alleged D.D. as the oral evidence of the PW-106 before the Court is certainly more credible than any other evidence. Secondly, even in this alleged D.D., the thumb impression has not been identified or endorsement of "Before Me" has not been put up by PW 130. Hence, it would not be proper to accept the alleged D.D. as the earlier statement of PW-106 when it is even formally not getting proved and becomes doubtful on the face of it.

6.1 Exh.838 as alleged of PW-161 is on record but, PW-161 states that he does not remember or he does not know whether his toe impression, was taken while he was in the hospital or not. Even this toe impression has not been identified by the PW 130. Hence, without repeating what has been discussed herein above in case of PW-106, it would be sufficient to opine that no value can be attached to such alleged D.D.

6.2 Exh.1066 is on record as D.D. of PW-154 but, at para-18 of the deposition PW-154 disowns the thumb impression to be that of his thumb impression and that comparing the oral evidence

on oath before the Court and the alleged D.D., the oral evidence before the Court has higher value. Noting the fact that the witnesses were in grief for long and were under tremendous fear and were admitted in the hospital and as discussed above were struggling between death and life, if the witness disowns his thumb impression, the same should not be believed to be his thumb impression in the facts and circumstances of the case.

Moreover, Shri K.P. Shah, the Executive Magistrate, before whom the alleged declaration was made, has not been examined as a witness by either sides. Considering the same, it is absolutely not prudent to accept the D.D. as the earlier statement of PW-154 before Shri K.P. Shah which is neither formally proved by Shri Shah, the Executive Magistrate nor by the PW.

7. Vide Exh.853 and vide Exh.854 two different alleged Dying Declarations of Mehboobbhai Khurshidahmed Shaikh and of Shakinabanu Farooqahmed Bhatti have been brought on record. Both of them had passed away, as is clear from Exh.2566 the closure cum explaining purshis given by the prosecution. Shri Mehboobbhai has been shown as one who had died in the riot whereas, Shakinabanu was a witness who died during the trial. Since both the witnesses had died, it is not possible to verify the thumb impression was whether done by them or not. That being the fact, reasonable doubt is raised against the genuineness of these D.D. hence the alleged D.D. cannot be believed as D.D. of the two. Moreover, in any case, in absence of their version before the Court, there remains no significance of the alleged D.D. except proving the occurrence

on record by the documents brought on record by the defence.

8. The D.D. of Sufiabanu Abdulmajid (daughter of PW 156) is on record. She had passed away during her treatment. Even this alleged D.D. was recorded by PW-130 and where there is only thumb impression. The said thumb impression has not been identified or there is no endorsement of the Doctor on the record or of PW 130, the Magistrate of "Before Me". It therefore becomes much doubtful as to Exh.836 is D.D. of deceased Sufiabanu or not.

The version of the deceased is not now available. Hence, her thumb impression could not be identified even in the oral evidence. In light of the fact that the thumb impression remains an impression without any identity or without any authorization or without endorsement of "Before Me", this D.D. cannot be accepted on the face of it.

Considering the overall facts and circumstances of the case, this Court does not find it prudent to attach any evidentiary value to such alleged D.D. when it is extremely doubtful that deceased Sufiyabanu has put her thumb impression on the alleged D.D. or not. The presumption of regularity of official act is rebutted effectively.

9. PW-158 and PW-191 have been examined before the Court by the prosecution. Both the D.D. respectively at Exh.841 and at 842 have been taken on record during the course of cross-examination of these PWs. Both the witnesses have disputed about much of the facts written in the D.D. and they have thoroughly disowned the vital facts. Again both the D.D.s

were recorded by PW-130. Though in case of both these D.D.s also neither the endorsement of the doctor is there nor the signatures have been identified by PW-130 but since some of the contents and the signature of the D.D.s have been accepted by the respective PWs, it is not proper to throw away both these D.D.s as not credible to the extent of the admitted contents alone. It seems that PW-130 has recorded many D.D. and many of the witnesses belonging to the category who have not involved any of the accused in the crime.

10. The more logical interpretation in the fact situation could be that, on account of tremendous fear, the mental framework, having lost faith in the governmental agencies and at the relevant point of time having no courage to give the names of the accused, the PW 158 and PW 191 must have given the kind of the reply noted by PW-130 which is qua the admitted contents. The subject has been dealt with and discussed in detail under the head of 'Psychological Trauma, Fear and its Impact'. When the witnesses have survived and are before the Court to state on oath, those declaration cannot be taken as D.D. as are merely the statement. Instead of perceiving that the witnesses are speaking lies before the Court, it sounds more appropriate to perceive that having passed the stage of tremendous fear what has not been stated need not be given any importance and having regained confidence what the witnesses speak before the Court, is the truth hence, should be given due importance. It is very natural for such witnesses to avoid any confrontation with anyone during those circumstances. The grip of fear, tension and the situation which was horrifying and terrifying, the witnesses would not reveal truth and that they would certainly be afraid

of sharing the information with anyone and more particularly giving specific name of the accused to the persons representing governmental agencies. Considering the same, this Court is of the firm opinion that PW-158 and PW-191 are not lying before the Court. These two have also not lied before the Executive Magistrate, but since they were helpless, they had no option but to tie up their lips and to observe silence and only to bother for their existence and their survival.

11. Moreover, common names in Muslims are also an issue when two ladies are noted for the same name like PW-130 has noted DD of Sufiabanu Abdulmajid Shaikh and DD of Sufiabanu Inayatali Saiyad. It is difficult to accept that the official act has performed properly when even the thumb impression is also not identified by the Executive Magistrate.

It also needs to bear in mind that in this case, no Investigating Officer till the SIT or no Executive Magistrate would have ever fully and calmly elicited the details from the victims who were badly injured or were under tremendous fear, which was very much needed. It seems to have not been done. The victims were in the state of mind of losing all trust in the entire system. It is but obvious that such victims would not share any details except the formal details like name, address, family members etc., because, in those days giving the name of the accused was to bell the cat which, under the tremendous effect of the series of occurrence that took place during riots and even on account of non-cooperative behaviour of police, no victim would dare to.

(B) FINDINGS :

From the discussion as above, following are the findings.

In all, there are 15 alleged Dying Declarations on record and all of it have been brought on record by defence.

(a) This Court is of the opinion that qua PW-158 and 191 the D.D.s at Exh.841 and at Exh.842 are not credible to an extent of the part of the version, which is refused to have been stated by them.

The involvement by PW 191 of Bhavani and Guddu in his oral evidence is held to be completely reliable. In the same way, involvement of the A-30 by PW 158 is also held to be completely reliable. [ONLY ADMITTED PARTS OF THESE DYING DECLARATIONS STAND PROVED AND NONE FROM BELOW.]

(b) Exh.836, the alleged D.D. of deceased, Sufiabanu Abdulmajid (Daughter of PW 156) is not worthy to be accepted as lawful evidence and is not held to be D.D. or even statement of her.

(c) Deceased, Mehboobbhai Kurshidahmed Shaikh and deceased Shakinabanu Farooqahmed Bhatti had died in the incident and dropped as PW on account of their death during trial.

No significance is attached to the alleged D.D.s at Exh. 853 and Exh.854 except for admission of the occurrence by the defence.

(d) The D.D. of PW-106 at Exh.840 and D.D. of PW-154 at Exh.1066 and D.D. of PW-161 at Exh.838 are held to be not lawful evidence.

(e) The D.D. of Sufiabanu Inayatali Saiyed and Sarmuddin Khalid Shaikh respectively at Exh.846 and 837 on record are not witnesses before this Court. Their D.D.s have therefore no value except admission of the occurrence by the defence.

(f) PW-159, PW-214, PW-164, PW-163, PW-160 and PW 251 (as husband of Sufiabanu Inayatali Saiyad) are all the PWs who have survived and have deposed before the Court in tune of their D.D., Exh.839, 843, 845, 844, 847. This does not help the defence in any manner. It rather shows admission of the occurrence by defence.

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~:: PART - 3 ::~

CHAPTER - I: CONSPIRACY

I. Point of Determination No.1 :

Whether the Prosecution proves beyond reasonable doubt that, on the date, time and place of the offence, and in the facts and circumstances of this case, any criminal conspiracy has been hatched by the accused (Part-1) and whether any offences were committed in consequence of abetment and/or

instigation and/or in pursuance of the conspiracy hatched by the accused or not? (Part-2)

If yes, when the conspiracy was hatched, the offences mentioned in this point for determination were committed by which of the accused? (Part-3)

(With reference to Sec.-120 B of I.P.C. and for the offences committed R/w it.)

[1] Having perused the oral and documentary evidence on record and upon considering the circumstantial evidence on record and settled position of law following points have been considered by this Court to answer the issue :

(A) LEGAL ASPECTS OF CONSPIRACY :

(1) Section 120A of the Indian Penal Code (hereinafter shortly referred as 'IPC') defines criminal conspiracy which spells that, 'when the accused agreed to do or caused to be done an act and when such act is either illegal or is done by illegal means and when at least one of the accused does any overt act in pursuance of the agreement arrived among the accused is said to have committed the offence of hatching criminal conspiracy'.

Commission of criminal conspiracy requires that, there has to be a common design and common intention of all the accused to work in furtherance of common design. Each

conspirator though plays his separate role in one integrated and united effort to achieve the common purpose. In such case each of the accused is hatching conspiracy.

(2) There has to be association of two or more persons to hatch the criminal conspiracy. The offence of criminal conspiracy consists of a very agreement between two or more persons to commit an offence. There has to be unanimity for the purposes and for the objects to be achieved. In a way it is a mental process among the accused.

Section 43 of IPC defines the word 'Illegal' which is applicable to everything which is an offence or prohibited by law.

(3) Hatching of criminal conspiracy being mental process among the accused, generally direct evidence to link the accused with the conspiracy would not be available.

As required under Section 10 of the Indian Evidence Act (hereinafter shortly referred to as 'IE Act'), where there is reasonable ground to believe that two or more persons have conspired together to commit an offence anything said or done by any one of such persons in reference to their common intention, after the time when such intention was first entertained by anyone of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

The conduct of the accused prior to the offence and

their conduct after the conspiracy is hatched are important factors.

(4) The criminal conspiracy remains in existence till the act and omission and or the offences are being continued to be committed.

It is matter of common experience that in conspiracy, the accused is alert, conscious and would take all necessary care to see to it that conspiracy should not be proved, hence direct evidence is seldom available to prove criminal conspiracy.

(5) Whenever the conspirator do any offence or act or omission prohibited by law, all the conspirators becomes liable for the act or omission which is their joint liability and it is for this reason, the offence committed by one of the accused can be used as evidence against the co-conspirator.

(6) For any of the charged offences, if there is no express provision of abetment in that particular offence, the provisions of abetment in Chapter-V of IPC would be applicable. Section 109 provides for abetment to any offence when the act abetted is committed in consequent of the abetment. If the act is committed in consequent of the instigation or in pursuance of the conspiracy it is abetment. Thus, if the co-conspirator accused does any act in pursuance of conspiracy or instigation it would be termed to have been done on account of the abetment by the conspirator who proves to have abetted or instigated.

(7) All the conspirators are liable for illegal act or omission by any co-conspirator under the principle of joint liability when the offences are committed because of collective decision.

The Court can always infer about the intentions and objects of the accused where the act of the co-conspirator before the conspiracy and after the conspiracy assist the Court to so conclude.

The presence of the co-conspirator is not material and a necessary ingredient to invoke principle of joint liability.

[I] EXTRAJUDICIAL CONFESSION AND ITS EFFECTS :

In the facts of the case to decide whether there was conspiracy or not, it is essential to discuss the confession and its impact also. The sting operation has been discussed and decided in separate chapter in this part.

(8) In the matter of **Mohd. Khalid v. State of West Bengal**, Hon'ble the Apex Court through the Full Bench has held as under which is reported at **2002 Law Suit (Supreme Court) 826** and which is essential to understand the concept behind Sec.30 of the Indian Evidence Act ;

“(31.) A confessional statement is not admissible unless it is made to the magistrate under section 25 of the Evidence Act. The requirement of section 30 of the Evidence Act is that before it is made to operate against the co-accused the confession should be strictly established. In other words, what

must be before the court should be a confession proper and not a mere circumstance or an information which could be an incriminating one. Secondly, it being the confession of the maker, it is not to be treated as evidence within the meaning of section 3 of the Evidence Act against the non-maker co-accused and lastly, its use depends on finding other evidence so as to connect the co-accused with the crime and that too as a corroborative piece. It is only when the other evidence tendered against the co-accused points to his guilt then the confession duly proved could be used against such co-accused if it appears to effect him as lending support or assurance to such other evidence. To attract the provisions of section 30, it should for all purposes be a confession, that is a statement containing an admission of guilt and not merely a statement raising the inference with regard to such a guilt. The evidence of co-accused cannot be considered under section 30 of the Evidence Act, where he was not tried jointly with the accused and where he did not make a statement incriminating himself along with the accused. As noted above, the confession of a co-accused does not come within the definition of evidence contained in section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is only when a person admits guilt to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth. Legislature provides that his statement may be considered against his fellow accused charged with the same crime. The test is to see whether it is sufficient by itself to justify the conviction of the person making it of the offence for which he is being jointly tried with the other person or persons against whom it is tendered. The proper way to approach a

case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence. This position has been clearly explained by this Court in ***Kashmira Singh v. The State of Madhya Pradesh, AIR 1952 SC 159****. The exact scope of section 30 was discussed by the privy council in the case of* ***Bhubani v. The King, AIR 1949 PC 257****. The relevant extract from the said decision which has become locus classicus reads as follows:*

> *"Section 30 applies to confessions, and not to statements which do not admit the guilt of the confessing party..... But a confession of a co-accused is obviously evidence of a very weak type.... It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, make it evidence on which the court may act but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. The confession of the co-accused can be used only in*

support of other evidence and cannot be made the foundation of a conviction".

(32.) ***Kashmira Singh's principles were*** *noted with approval by a constitution bench of this Court in* ***Hari Charan Kurmi and Jogia Hajam v. State of Bihar, 1964 (6) SCR 623****. It was noted that the basis on which section 30 operates is that if a person makes a confession implicating himself that may suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly. So section 30 provides that such a confession may be taken into consideration even against the co-accused who is being tried along with the maker of the confession. It is significant however that like other evidence which is produced before the court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Evidence Act is produced before the court it is the duty of the court to consider that evidence. What weight should be attached to such evidence is a matter in the discretion of the court. But the court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can however be adopted by the court in dealing with a confession because section 30 merely enables the court to take the confession into account. Where, however, the court takes it into confidence, it cannot be faulted. The principle is that the court cannot start with confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the*

said evidences, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on some other evidence. That is the true effect of the provision contained in section 30. We may note that great stress was laid down on the so-called retraction of the makers of the confession. Apart from the fact that the same was made after about two years of the confession, PWs. 81 and 82 have stated in court as to the procedures followed by them, while recording the confession. The evidence clearly establishes that the confessions were true and voluntary. That was not the result of any tutoring, compulsion or pressurization. As was observed by this Court in ***Shankaria v. State of Rajasthan, 1978 Crl. LJ 1251*** *the Court is to apply double test for deciding the acceptability of a confession i.e. (i) whether the confession was perfectly voluntary and (ii) if so, whether it is true and trustworthy. Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise, such as mentioned in section 24 of the Evidence Act, it must be excluded and rejected brevi manu. If the first test is satisfied, the Court must before acting upon the confession reach the finding that what is stated therein is true and reliable. The judicial magistrate PWs. 81 and 82 have followed the requisite procedure. It is relevant to further note that complaint was lodged before the magistrate before his recording of the confessional statement of accused Md. Gulzar. The complaint was just filed in court and it was not moved. The name of the lawyer filing the complaint could not be ascertained either. This fact has been noted by the designated court."*

[II] It is also useful to reproduce paragraph 34 to 39 to clarify as under which circumstances, Sec.10 of the Indian Evidence Act has its application.

"(34.) The first condition which is almost the opening lock of that provision is the existence of "reasonable ground to believe" that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement "in reference to their common intention". Under the corresponding provision in the English law the expression used is "in furtherance of the common object". No doubt, the words "in reference to their common intention" are wider than the words used in English law (vide ***Sardar Sardul Singh Caveeshar v. The State of Maharashtra, AIR 1965 SC 682****).*

(35.) But the contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility under section 10 if it was made "in reference" to the common intention, is too broad a proposition for acceptance. We cannot overlook that the basic principle which underlies in section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to

the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out of the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirators under section 10.

(36.) Way back in 1940, the privy council had considered this aspect and Lord Wright, speaking for ***Viscount Maugham and Sir George Rankin in Mirza Akbar v. King-Emperor, AIR 1940 P.C. 176*** *had stated the legal position thus:*
"The words 'common intention' signify a common intention existing at the time when the thing was said, done or written by one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party."

(37.) Intention is the volition of mind immediately preceding the act while the object is the end to which effect is directed the thing aimed at and that which one endeavours to attain and carry on. Intention implies the resolution of the mind while the object means the purpose for which the resolution was made.

(38.) In ***Bhagwan Swarup's case (supra)****, it was observed that the expression 'in reference to their common intention' is wider than the words 'in furtherance of the common intention' and this is very comprehensive and it appears to have been*

designedly used to give it a wider scope than the words 'in furtherance of in the English law. But, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made in reference to the common intention'. Therefore, a post arrest statement made to the police officer was held to be beyond the ambit of section 10 of the Evidence Act.

(39.) In ***Sardul Singh Caveeshar v. The State of Bombay, AIR 1957 SC 747*** *it was held:*

> "*The principle underlying the reception of evidence under section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. The rule in section 10 of the Evidence Act confines that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts were 'in reference to their common intention' that is to say ' things said, done or written while the conspiracy was on foot' and 'in carrying out the conspiracy'. It would seem to follow that where the charge specified the period of conspiracy evidence of acts of co-conspirators outside the period is not receivable in evidence.*"

[III] It is also useful to take down paragraphs No.17 to 27 which are elaborately explaining as to what is criminal conspiracy, what are its characteristics and what Law has developed on the subject.

“(17.) It would be appropriate to deal with the question of

conspiracy. Section 120B of IPC is the provision which provides for punishment for criminal conspiracy. Definition of 'criminal conspiracy' given in section 120A reads as follows: "120A- When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy; Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and

renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. For an offence punishable under section 120-B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

(18.) No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

(19.) In Halsbury's Laws of England (vide 4th Ed. Vol.11, page

44, page 58), the English law as to conspiracy has been stated thus:

> "Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the court. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus rues in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

(20.) There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct or circumstantial evidence.

(21.) Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open

to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

(22.) The provisions of section 120-A and 120-B, IPC have brought the law of conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. Russell on crime (12 Ed. Vol. I, p.202) may be usefully noted- The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. Mere knowledge, or even discussion, of the plan is not, perse, enough." Glanville Williams in the "Criminal Law" (Second Ed. P. 382) states-

> "The question arose in an Lowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. Ewhipped P. D was acquitted of

conspiracy because there was no agreement for 'concert of action', no agreement to 'co-operate."

Coleridge, J. while summing up the case to **Jury in Regina v. Murphy states**:

"I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, had they this common design, and did they pursue it by these common means the design being-unlawful."

(23.) As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by

proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in section 120B read with the proviso to sub-section (2) of section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement be tween the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in section 120I

(24.) The conspiracies are not hatched in open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. [See: E.K. Chandrasenan v. State of Kerala]

(25.) In Kehar Singh and Ors. v. The State (Delhi Administration), this Court observed:

"Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such

evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Conspiracy can be proved by circumstances and other materials. (See: **State of Bihar v. Paramhans [1986 Pat LJR 688]**). To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use. (See: **State of Maharashtra v. Som Nath Thapa [JT 1996 (4) SC 615]**)

(26.) We may usefully refer to **Ajay Agarwal v. Union of India and Ors.4**. It was held: XX X X X X

"8.....It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected, and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished It is immaterial whether this is found in the ultimate objects The common law definition of 'criminal conspiracy' was stated first by Lord Denman in Jones' case that an indictment for conspiracy must "charge a conspiracy to do an unlawful act by unlawful means" and was elaborated by Willies, J on behalf of the judges while referring the question to the House of **Lords in Mulcahy v. Reg** and House of Lords in unanimous decision reiterated in **Quinn v. Leathem** 'A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means So long as such a design rest in intention only, it is not indictable When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties promise against promise, actus contra actum, capable of being enforced, if lawful, punishable of for a criminal object, or for the use of criminal means This Court in **B.G. Barsay v. State of Bombay** held 'The gist of the offence is an agreement to break the law The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done So too, it is an ingredient of

the offence that all the parties should agree to do a single illegal act It may comprise the commission of a number of acts Under section 43 of the Indian Penal Code an act would be illegal if it is an offence or if it is prohibited by law' In **Yash Pal Mittal v. State of Punjab** the rule was laid as follows The very agreement concert or league is the ingredient of the offence It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators In achieving the goal several offences may be committed by some of the conspirators even unknown to the others The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators In **Mohammad Usman Mohammad Hussain Maniyar and Ors. v. State of Maharashtra [(1981) 2 SCC 443]** it was held that for an offence under section 120B IPC, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication."

(27) Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. [See **Baburao Bajirac Patil v. State of Maharashtra 1]**. It can in some cases be inferred from the acts and conduct of parties. [See **Shivanarayan Laxminarayan Joshi and Ors. v. State of Maharashtra and Ors.**]"

(B) ORAL EVIDENCE :

To answer this issue No.1, it is necessary to appreciate the evidence on record keeping in mind the points already mentioned herein above for the appreciation of oral evidence of the victims and their relatives and considering the very very peculiar and unusual facts and circumstances of this case.

It is common evidence of all the PWs that the occurrence took place on 28/02/2002 at Naroda Patiya in an attack by Hindus on Muslims in communal riot spread through out the day.

1. PW-104 :

(1.1) The witness was residing at the lane No.7 of Hussain Nagar.

(1.2) According to the witness, the call of Bandh was given by VHP and that under an impression that many Bandhs

(voluntary curfew) are not successful, the witness started for his auto rickshaw plying at about 8.30 to 9 a.m, he came to Milan hotel, found the 'Bandh' very effective, consumed tea there, at that point of time, he saw police was checking at Mosque and surrounding shops.

At this point of time, a mob of about 1500 persons came from Kuber Nagar which was led by A-20, A-41 and A-2. The mob was marching towards the Muslim locality, hence the witness returned in his rickshaw while he saw the mob carrying weapons in their hands.

He saw that in the mob A-20 had sword, A-2 and A-41 had revolver. The witness then went to his house, parked his rickshaw and told his brother about the scene outside and told him to go away along with family at S.R.P. police line.

(1.3) According to the PW, he then came out, the mob which he saw before coming home came closer to their houses and was giving slogans of 'Jay Shri Ram' and was stone pelting.

Since one army jeep came the mob ran away towards Natraj. At about 9.30 to 10.00 a.m., one police jeep came and parked near ST workshop. Following this jeep came A-2, A-20 and A-41. Then after, white maruti frontie came wherein the PW noticed presence of A-37 - the M.L.A. of the area, A-37 talked with A-2, A-20, A-41 and police, A-37 was talking in a loud or excited tone and she was pointing towards Muslim locality. A-37, A-2, A-20 A-41 and police had called upon the mob which ran away towards Natraj hotel since an Army jeep came. That mob came back. Even with this mob A-37 had

discussed in a said loud and or excited tone and then she went away.

This mob of Hindus had weapons which then after became aggressive and violent and had assaulted Muslim locality.

(1.4) According to the PW, the mob was of Hindus, was doing stone pelting and firing at 09:30 or 10:00 a.m. At this time even the police was also firing, A-41 did private firing which had hurt Abid. A-2 has also done private firing because of which Mustak Kaladia was hurt on his shoulder. Numerous others were injured in the incident, they all were afraid and remained hidden in their chawls. The PW adds that, he then sent his family along with his brother, he also went inside the police line at about 10.30 or 11.00 a.m.

After going inside the police line, the PW searched his family, stayed at the house of a friend named Shri Kharadi, Shri Kharadi helped the witness in calling the police vehicle, even this vehicle was subjected to stone pelting at Krishna Nagar and that people have broken glasses of that vehicle and shouted "kill --- cut" which was learnt from one Faridabanu (PW 149).

The witness went to camp on 3/3/2002, his niece and her two children were done to death by torching them alive in this incident and the witness sustained damages as his house was robed and household etc. was damaged to an extent of Rs.55,000/-.

(1.5) While drawing the panchnama of the house of the

witness this fact was informed to crime branch who did not paid any heed and they told the witness to go to Naroda police station. The witness then contacted the then PI Naroda police station Shri Khutti, Shri Khutti advised to give statement in crime branch.

This is the reason why trust in crime branch and Naroda police station was totally shaken or this is the reason why the PW then after had no trust either in crime branch or in Naroda police station. Then after crime branch has only asked the name, address and damages and then after neither police contacted the PW nor the PW contacted the police.

It is after six months the PW returned to his house. Upon having learnt in the year 2008, about the constitution of S.I.T., he gave his reply clarifying as to why in the year 2002 his complaint or statement was not recorded.

(1.6) The PW deposed that when he was involving names of A-37, A-2, A-20 and A-41 in the crime, his complaint was not taken either by crime branch or even by Naroda police station.

The witness has correctly identified A-20, A-2, A-41 and A-37.

(1.7) The witness also identified A-58 as one of the members of the mob on that date, his name was not known to the witness.

(1.8) This witness is an eyewitness of the incident. This witness knows Gujarati and has studied upto Standard XI in

Gujarati, who lives at Naroda Patiya right from his birth. In comparison with other illiterate PWs and PWs not able to speak in Gujarati this PW was found reasonably able to properly express himself.

CROSS-EXAMINATION OF PW 104:

(1.9) During the course of cross-examination, the witness has not been falsified in any manner. He has admitted that though he has studied upto Standard XI in Gujarati and has not studied English language, but he signs in English, he also signed in English wherever he was required to sign and particularly wherever it was required to sign with reference to the incident in question, the witness reconfirms that he is an eyewitness, in the S.I.T. while giving the statement the witness gave his personal opinion for the reason of the incident in question (the said being absolute personal opinion of the PW, it is hardly material), in the statement the witness also opined about the preplanning and preconsortium to have been arrived among the accused to damage and destroy the property and injuring the people, it is important that the witness is also eyewitness of the incident of 2001 and that as has been elicited during the course of cross-examination this witness has also stated before the S.I.T. that A-2, A-20 and A-41 were also members of the mob even in the previous incident of the year 2001 related to Kashmir incident while the BJP has given call for bandh the very three accused viz A-2, 20 and 41 were burning the tyres and were beating and killing the Muslims which this witness has seen.

(1.10) In the opinion of this Court, this disclosure by

the witness very clearly place on record a very strong circumstance against A-20, A-2 and A-41 through their antecedents of getting involved in the activities against Muslims which needs a special note. This also shows prior acquaintance of the PW and three accused which makes TIP insignificant.

It is true that the witness admits that till the date he has not disclosed the involvement of the three accused (in the previous incident of the year 2001) to anyone, but in the opinion of the Court this means that the PW is not falsely involving any accused. In the opinion of this Court, it could also be because of the dominance the three accused enjoy in the locality that the PW could not dare to disclose the truth. As it may be, but the fact remains that such nondisclosure of the incident of the year 2001 does not discredit the witness by any means.

(1.11) Para 37 and 38 are related to identity of Asif, but from both the paragraphs the identity of the Asif is since not clarified on record only the name remains hence this part of the oral evidence is not helping the defence to falsify any other PW who coincidentally bear the first name Asif.

(1.12) Para 40 does not specify as to what is the name of wife of Abid, the witness has also been twisted on the aspect of the injuries sustained by Abid and Mustak in firing and in the opinion of this Court it is proving the fact of firing and the resultant death in the morning occurrence which is relevant. The P.M. notes brought on record prove the fact of death of Abid. His death is presumed since, he has neither been heard

of nor seen for more than 7 years. Bullet injury of Mustaq Kaladia also stands proved on perusal of his case papers at EXH.1976.

Many victims who have sustained firearm injuries have then after survived and were throughout the day taken one place to another place by dangling them hence except the medical expert it is not expected from any PW to state about the injury of the witness. Merely because the PW is unable to reply on the post physical status of the victims of firing, it cannot be believed that he was not eyewitness to the incident hence the defence does not gain anything by twisting the witness on the aspect.

It is true that some of the PWs have also opined the injuries of Abid and Mustaq in police firing also, but, nothing comes from police in form of investigation u/s.174 of Cr.P.C. and probability of private firing in the morning occurrence has also been proved. This PW is eyewitness and there is no reason on record to disbelieve this PW.

(1.13) The witness may not have sense of assessing the distance, may be in the feet or by steps, secondly the witness would have tendency to be more alert and conscious hence he would avoid giving any rough estimate though he might be able to do so this could be because of the fear of being disbelieved for other things and or it could be for lack of confidence, as it may be, but the fact remains that such inability does not doubt the version of the PW which otherwise seems to be quite sound and credible one.

(1.14) In paragraph 47, the witness admits that he can't assess the point for the rickshaw meter from his lane to Nurani. This shows that the witness is very natural and has no dot of falsehood. It is in fact inaccessible for the reason that in fact there is only highway in between from the lane of the witness to Nurani which is quite close by. The other replies in paragraph 47 clearly shows that the witness was indeed doing occupation of rickshaw driving even in 2002, but a notable point is the witness has been shown in the statement of crime branch to have occupied himself in tailoring work. This exhibits the kind of investigation and way of recording statements. How such record can be faithful record ?

(1.15) Paragraph 52 of this witness is suggestive of the fact that there was cut or turn in the divider of the highway and by using that cut Nurani Mosque can be approached. This aspect supports the version of PW-52 while she talks about the car of A-37 to have been approached at Nurani.

(1.16) The witness admits at paragraph 55 that he is unable to state the exact time, at what time there was mob at Krishna Nagar, Kuber Nagar and near Natraj. This helps the prosecution case and the time stated by the witness is his rough estimate. Every one may not have sense of time, hence it is natural.

(1.17) The witness states that he was standing near S.T. Workshop where at present police chowky is situated. This is the point from which the house of the witness was at stone throwing distance and hence his presence at this place seems to be extremely natural.

(1.18) This witness states that the mob of Hindus was about 1500 persons. In the opinion of this court, majority of the PWs are totally illiterate and may not be that sound in assessment of the number of the persons in the mob. It seems that to explain large crowd of uncountable persons the PW have stated the mob of 10 to 15 thousand persons. This court understands that this is how an illiterate person expresses the number of the persons of the mob, the illiterate person does not distinguish the mob of 1500 or 15000 what he wants to convey is that it was a large crowd of uncountable persons. This kind of expression when comes from illiterate person it cannot be termed that either the PW is a liar or exaggerating. While appreciating the evidence the Court is required to understand the society, to understand the level of understanding and perception of illiterate person and the difference in the art of expression between literate, semi-literate and illiterate persons. This Court firmly believes that poor assessment about the number of persons in the mob is different from identifying specific person along with his role in the mob.

(1.19) Since the PW denies having given any statement in the year 2002, and in the light of the discussion made at the Part-2 of the Judgement where common points on appreciation of evidence, of defence and point for the previous investigation have been discussed, the contradiction and omission of the year 2002 has no weightage, this Court believes that no statement has been given by this witness in the year 2002 but that makes no difference as it is also possible on account of fear and its impact.

(1.20) The fact that the witness did not give a complaint even though it was announced in the camp does not mean anything in the facts and circumstances of the case as has been already discussed.

(1.21) The applicant having given an application jointly with Nazirbhai Master and in the application to have urged to penalise the accused also does not make out any case for defence or say no doubt is created against prosecution version.

In the same way, not contended incriminating fact in the application at Exh.69 does not have any impact as the application was aimed to request the S.I.T. to take down the statement and nothing beyond that.

(1.22) The fact that even until the statement at the S.I.T., the PW has not disclosed anything to anyone including the leading visitors at camp and has not filed any police complaint or Court complaint though there was no threat or fear from any person is of no value as has already been discussed, the kind of fear and distrust on the system the witness and victim of horrifying crime had in their mind. This would naturally stop the PW from filing any complaint before any Authority.

It is however, notable that the witness did clarify that the witness could be settled in his business only in 2004 and that the priority of each individual is always peaceful life and at times one leaves other desires of seeking justice etc. and gives priority to the security of himself and his family and the witness cannot be any exception to that.

(1.23) The most important fact has been voluntarily stated by the witness at paragraph 72 that the attitude of Crime Branch and Naroda Police Station of not writing the names of the accused, named at S.I.T. by the witness has shaken his faith. The moot question is having shaken the faith of a common man, can it be accepted that he would knock the doors of the same system which has turned deaf ears to his cry ?

(1.24) According to this witness, upto 09:30 to 10:00 AM, no incident has taken place at Nurani. This admission of the PW is to be appreciated keeping in mind the fact that the witness has also stated that he is not very sure about the time.

(1.25) In paragraph 80 the statement of the witness at S.I.T. has been referred wherein the witness admits that he has not seen the attack on Nurani, but if paragraph 76 is seen, the witness fairly states the same thing hence this admission only helps the prosecution to prove that the witness is truthful and credible one.

The witness however, clarifies that since he was not near the Nurani, he has not seen the attack on Nurani and that he has stated the very same fact before S.I.T.

(1.26) According to the witness, A-41 did firing which hurt Abid, who died because of the said firing.

The witness also admits that he has seen the police firing but he adds that even A-41 was also firing. The witness adds that the Hindu mob as well as the Police was firing on Muslims. The witness is unable to describe the revolver he has

seen with A-41, the witness admits that he has seen only one firing by A-41.

It is but obvious that the witness cannot be in a position to distinguish and describe the kind of the firearm in the hands of A-41 or any of the accused as he cannot be termed to be expert on the subject.

(1.27) Moreover, according to the witness, when Abid and Mustak Kaladiya were hurt in the firing, the bullets came from the same direction. At this time, even police firing was on going. A-41, A-2 and police all were simultaneously firing. The other private and police firing was also witnessed by the PW who then went home.

(1.28) The witness states that A-2 and A-41 were in the mobs of Hindu, the mob was of 1500 persons which was near S.T.Workshop. A-41 was seen near Police Jeep and A-2 was near S.T. Gate when they were firing.

The witness is unable to give account of private firing and police firing, the witness did not see any remains of the bullet at the place. It is true that no FSL report or any other report to support private firing is on record, but even not collecting the requisite material to prove police firing also is the material which speaks for itself about the First I.O. and brilliant probability of private firing.

Exh.2020 is the PM Report of deceased Mohammad Shafiq Adam Shaikh who had sustained bullet injuries and injuries caused because of blunt weapon. Exh.2021 is the

inquest panchnama of the said deceased. Upon perusal of both these documentary evidences, it seems that the deceased had sustained injuries at Naroda Patiya near Nurani Masjid in the firing done there. If the deposition of PM Doctor PW-47 is perused, it is clear that the opinion of the doctor is nowhere challenged by the defence. Not only that, but Exh.2021 which is an inquest panchnama, has been exhibited upon admission by the defence. If all these are collectively seen, it is clear that the firing in which the deceased died is not clarified and specified to be police firing or private firing. To ascertain the firing to be private firing or police firing, it sounds fitting to take aid from other evidences on record.

PW-104 was the witness of private firing by A-2 and A-41. Even PW 149 also speaks of private firing to have been done in the morning. The death proved of deceased, Mohammad Shafiq Adam Shaikh also speaks of private firing and death of Mohammad Shafiq proves it through strong circumstantial evidence, wherein it is proved that it is the miscreants of the mob gathered in the morning incident have done private firing. There is no evidence about the death of this Mohammad Shafiq to have been caused in police firing. The death in firing is not challenged by the defence and no police witness states the death of this Mohammad Shafiq was on account of police firing. When private firing has taken place there, the circumstances strongly reveals the death in the private firing. He has also deposed that apart from the names, he gives numerous others were also injured in firing in the morning incidents and that they had opened firing in which some Muslims were injured. It is true that there is no direct linking evidence to hold that deceased Mohammad Shafiq Adam Shaikh died in private firing done by A-41 or A-2 and A-

44 but then, perusal of Exh.2021, Exh.2020 and deposition of PW-47 after having recalled the said witness and noting the fact that his opinion has not been challenged, cumulatively putting up on record a very strong circumstance in which it becomes clear that what PWs are telling about private firing by some of the accused, is absolutely true and there is no reason to disbelieve it when there is such a strong circumstance on record. It is therefore, clear that private firing did take place in the morning and in the morning incidents homicidal death were caused by the mob of miscreants. The possession and use of firearm by A-2 and A-41 must be to terrorise Muslims which has been proved beyond reasonable doubt by the strong circumstantial evidence.

PW 104 has further testified that in the mob of 1500 persons, there were khaki short and the person who wore undershirts who also were possessing weapons, this people also attacked on the Muslim chawls on that day, he has seen the five accused he has identified in the mob of 1500 persons, the three of the accused were seen by the witness, when he was taking tea at Milan Hotel. He saw the accused for less than five to seven minutes. The mob was coming from Kuber Nagar which also had persons with shorts and undershirts. The witness saw the weapons of the person of the mob when he took turn along with the rickshaw and when the mob was at distance of 30 feet from him when the witness was driving his rickshaw in a very slow speed since it was turn.

In the opinion of this Court, all what has been elicited during the cross discussed hereinabove, is establishing that the witness is a truthful witness, is not falsely involving

any person and the entire version given by him sounds to be quite probable. This witness is even able to describe the dress wore by some of the persons.

(1.29) The witness is unable to mention the number of the persons who had sword in their hands. It is not probable that any person witnessing such a violent and attacking mob would pause himself to count the persons with sword. The witness did see revolver in the hands of the person of the mob.

(1.30) The witness admits to have no conversation on that day with the accused identified by him. The witness had no even previous talk or conversation with the five identified accused, he had no relationship of going to their house or sitting along, he has learnt the name of the accused from people. The witness volunteers that he was knowing the accused prior to 2002 by name. This again strengthens prior acquaintance of the accused and the PW.

In the opinion of this Court, the entire paragraph 107 if is to be appreciated, it would only mean that the witness has not known the accused after the incident and that he was knowing the accused even prior to the incident, however, he agrees to have no intimacy to any of the accused but then in the humble opinion of this Court, it is not required as well. What is important is if the accused are already known to the witness before the incident in question then not holding their Test Identification Parade would not come in the way in implicating the accused in the crime, if the evidence of the witness is otherwise sound and credible one.

When this witness says that he has asked the name of the accused to the people and when he makes a voluntary statement that he knew the accused before 2002 the previous sentence only means that though he was knowing the accused by name, he has even confirmed from the people. In the opinion of this Court, the witness is found truthful and reliable even on this count.

(1.31) The witness has not seen the photograph or posters of the accused. He has seen A-37 in T.V. but since A-37 is a public figure, it is hardly material as to how the witness knows her. It is even an admitted position that she is M.L.A. of the Naroda Constituency and as clarified by the witness at paragraph 108, the other accused are known to witness by name, who are B.J.P. workers.

What is notable is the fact of remaining accused being B.J.P. Worker is neither disputed nor challenged. The witness admits that he himself is a voter and A-37 was contesting election and she is M.L.A. from B.J.P. which are all undisputed fact. The defence has suggested that except A-37, the other four accused are canvasser of A-37 and thus were coming in the Muslim locality, the witness has confirmed that A-20 and A-41 are worker of B.J.P.

(1.32) The hotel of A-2 is near Natraj Hotel. This admission of the witness helps the prosecution to prove that A-2 was really known to the witness. The witness has also admitted that he knows the business of A-41, even this is suggestive of the prior knowledge of the witness about the identity of A-41.

(1.33) The witness denies that he has stated before the S.I.T. that his statement of 2002 and of 2008 were read over to him and the same were true.

It cannot go out of the mind that many investigating officers have peculiar habit of inserting certain sentences in the statement of every witness, the I.O. of SIT or his writer seems to be in habit of writing this sentence for every witness because it is not probable that every witness would speak uniform sentence by use of uniform words.

Moreover, what is necessary for search of truth is also notable that in the statement of this PW after the quoted words, it has been clarified by the witness that his reply of 2002 was related to damages and destroying of the household only. Even this sentence in the statement clarifies that any other information except damages mentioned in the statement was not owned by the PW even before S.I.T. hence he is consistent at S.I.T. as well as before this Court. The sentence in the statement of the S.I.T. that the witness stated before the S.I.T. that, all that read over from the statement of 2002 was true. This sentence which is formal for all most all PW is therefore held to be not the sentence spoken by the PW before S.I.T.

(1.34) This witness admits to have seen one woman in the dress of police, this facts tallies with the version of PW 52 and this also supports the presence of PW 52 at the site on the day.

(1.35) Undue emphasis has been given to S.I.T. application

which has been dealt with in detail at Part-2 of the Judgement, hence to avoid repetition, the same is not discussed here. Suffice it to say that this part of the cross-examination is thoroughly worthless to falsify the witness. What is possible is mechanical use of such sentence by the IO or his writer. There is hidden tendency of not letting the previous I.O. (colleague) wrong.

(1.36) The witness has admitted that he has not given even any physical description of A-58 while his different statements.

This Court firmly believes that the identity of A-58 in the Court as a member of the mob without any further information conveys not to base conclusion about his participation in the incident, solely on this circumstance. Such chance identity should be avoided to be taken as full proof evidence but, it can be noted as one circumstance.

(1.37) As has been elicited from the witness, the witness has referred A-37 as 'Our M.L.A.'. In the opinion of this Court, this rather proves that the witness has not mistaken in the identity of A-37.

(1.38) The explanation of the witness for not going along with his brother seems to be quite acceptable one and that shows very natural conduct of the witness. The witness has admitted that he has seen the mob second time at about 09:30 when he again came out.

The defence has suggested here that the car of the A-37 was seen by the witness after about half an hour. Then

after the witness has admitted that he does not know as to what talk A-37 had with police and the co-accused. Even this reply seems to be very natural, but then this suggests acceptance of the presence of the A-37 at the site even by the defence.

(1.39) The defence further suggests that the witness did learn later that A-37 was in fact instructing the police that there should not be any difficulty at Hussain Nagar or Jawan Nagar as it is her constituency.

Though the witness has denied this suggestion the fact remains that the defence suggests and accepts the presence of A-37 at the site without disputing the time deposed by the witness.

(1.40) It has even been suggested that by pointing to the constituency, A-37 has directed the police to protect the persons of her constituency.

This Court is of the opinion that when such a big calamity comes and such a terrifying and horrifying situation of presence of mobs of majority with deadly weapons takes place in the constituency of any M.L.A., it is not probable that the said M.L.A. would not come at all to one's constituency even if one is available in the city. The defence puts up the case that upto 8.40 a.m. A-37 was at Gandhinagar which is only about 30 kilometres away from the site of the offence. The disturbances started at the site after about 9.30 a.m. or 10.00 a.m. PW 136, 143, 176, 149, 192, 198, 227 etc. state that the disturbances started after arrival of A-37 which sounds quite probable and

credible one.

The defence has not disputed that A-37 was in the city. The presence of A-37 is quite natural at the site as deposed by the witnesses and hence the said aspect sounds to be extremely credible and natural.

(1.41) The cross on inaction of the witness when no actions were taken though he was giving the names of the accused identified by him. This is not inaction, it is distrust in the system hence this does not take the defence anywhere.

(1.42) The statement of the witness before S.I.T. is quoted which is admitted by the witness to have been stated wherein there is specific mention of A-37 to have come in the car dressed up in white *saree* and saffron scarf on her throat.

It is further admitted that the witness did state before the SIT that A-37 talked to A-2, A-20 and A-41. This in fact, supports the prosecution case and the witness seems to be giving his version before this Court in consistency of his statement. Hence he becomes very consistent and credible one.

It has been suggested to the witness that 'A-37 was talking in a loud tone and was scolding police to take care of mobs of both the sides and was further telling the police that even Muslims are my voters'.

This suggestion also suggests and accepts the presence of A-37 even by defence at the place and time mentioned by the PW.

(1.43) Another part of the statement of the witness at S.I.T. has been referred in paragraph 135 which is clearly in support of the version of the witness that during the disturbances and among the miscreants he saw A-37, A-2, A-41 and A-20, who all were near the gate of S.T.Workshop and were instigating the mob by gesture which was in between 08:00 a.m. to 09:00 a.m.

In the opinion of this Court, the timing given by the witness are based on his guess work which has to be seen as morning, noon or evening and nothing beyond that. This shows presence of the A-37 at the site in the morning.

(1.44) The witness has not stated before S.I.T. about the attitude of Naroda police station but that indeed does not matter much because once S.I.T. is to record the statement the witness may not be inclined to say about the police for any reason as the approach to be adopted in similar circumstances differs from man to man. There is no straight jacket formula as what the PW would state before the I.O. and what he would not state.

(1.45) Certain suggestions like why the friend who has given shelter to the witness, was not requested to call his boss to enable the witness to file his complaint etc. are in no way helping the defence. It is not expected of any refugee to put up such demands.

The priority of every person would always be for his own security and protecting his own life hence the PW must be inclined to save himself and to meet his family anyhow.

(1.46) As discussed hereinabove, the suggestion and admission that before S.I.T. the allegations have not been disclosed by the PW are not impressive, in insecured situation and in the situation were one was sure that no relief was surely to be granted one may not incline to disclose such facts.

(1.47) The admissions in the cross-examination that the witness does not know all and every person residing in different Muslim chawl does not prove that his identity of the accused is not genuine and true. Two unequal things cannot be compared. On the one hand there are accused who are authors of horrifying, terrifying and unforgettable incidents of one's life and on the other hand, the harmless neighbours, who because of the need of livelihood, say to earn bread for the family may not have occasion to know each other. How these two unequal facts can be compared. The persons viz. the accused who have ruined and destroyed everything of one's life can never be forgotten.

The equation advanced by the defence is so poor that no defence can sustain on it when after this PW, the defence of A-37 changes from the suggestion and acceptance of presence at the site and working for the interest of both the communities to denial to have come at site, alibi and to have played any role at all.

This change strengthens the conclusion that in fact, A-37 was very much at the site then.

(1.48) At last a general observation needs to be placed on

record that through the cross-examination of this PW what was suggested and accepted was based on defence of probability. It is not probable and natural that the M.L.A. of the area who knows the call of *bandh* given by VHP, who knows cause of the said call, who is in the city would not come to the constituency at all. Coming to the area and talking with the police and the people there sounds natural and is not crime, hence the suggestions have not been quoted for that purpose. It is highlighted since with the change of the learned Advocate for A-37 an attempt to prove alibi has been made through cross-examination of different PW.

It is not possible that A-37 would not come to the site and meet the persons of the mob where her canvasser of election (as was suggested to other PW by the defence as identifying for A-2, A-41, A-20 etc.) were present in the mob. These co-accused were present in the mob with deadly weapons. Where the canvassers of the M.L.A. are present with intentions and preparation it is most logical that the M.L.A. would reach there and encourage, instigate, promote, co-operate, give confidence to them and would speak what suits to their mood. Therefore it is held that A-37 did instigate the mobs, she met the police and as is proved as most probable she abetted all the offences committed on that day by the unlawful assembly or otherwise by the instigation she provided and by acting in pursuance of conspiracy and even by hatching the criminal conspiracy with all those co-accused she met that morning.

OPINION :

(a) After arrival of A-37 the mob became violent. She talked with mob in excited tone where A-2, A-41 and A-20 were present. This proves instigation or provocation by A-37 to the Hindu mob which instigation etc. can be inferred to hurt and kill Muslims and to damage and destroy property of Muslims including Nurani Masjid as this mob had deadly weapons in their possession and as the mob after meeting A-37 did all those offences.

(b) This witness proves the presence and participation of A-2, A-20, A-37 and A-41 beyond all reasonable doubt in the morning occurrence and in the homicidal death of Mohammad Shafiq Adam Shaikh, hurt to Mustaq Kaladia and Abid, where Abid died due to private firing and where Mustaq was injured in firing.

(c) It is true that the witness has neither given any narration before the S.I.T. nor given name of A-58 before the S.I.T. but, since it is possible to happen that unless you see a person whose name is not known to you, you may not be able to narrate the description except something peculiar. In case of A-58, nothing is peculiar in his appearance. This PW is found reliable and truthful, he is only ascribed the role to have been present in the mob which is at the most a circumstance against the accused. This circumstance alone does not prove the guilt of A-58, hence, if some material is found against A-58 to prove his guilt, this circumstance can be called into aid. Considering this, it is not safe to act upon this identity alone. A-58 is not held guilty but, the circumstance is noted.

(d) The accused had preplanning and preconcert as the

members of the mob and A-37 has talked, A-37 conveyed fiery communication after which the mob executed objects and intentions to damage and destroy property of the Muslims and to do away the Muslims. This conduct strengthens the lawful inference of having hatched conspiracy.

(e) Criminal antecedents of A-2, A-20, A-41 though do not prove the charged offences, but it spells the previous conduct of the accused which is relevant and which helps understanding about their active role in this case also.

(f) This PW proves A-2, A-20, A-41 and A-37 to be in the morning incident and guilty as discussed.

The case of private firing by A-2 and A-41 is held to have been proved.

(g) A-2 has hotel near Natraj, A-41 does business in this area, A-2, A-20, A-41 are canvasser of A-37. They are worker of B.J.P.

FINDING OF PW 104 :

(a) This witness proves the presence and participation of A-2, A-20, A-37 and A-41 beyond all reasonable doubt in the morning occurrence. The PW even states about their involvement in the previous occurrence of the year, 2001.

(b) A-58 though not named has been identified as a person in the mob. This is a strong circumstance against A-58.

(c) Conspiracy was hatched among the accused to do away

Muslims, to destroy and damage property of Muslims.

(d) There was police and private firing by A-2 and A-41. The Muslims died in firing in the morning occurrence and it is not proved because of police firing only.

(e) A-2 has notel near Natraj, A-41 does business in this area, A-2, 20 and 41 are canvassers of A-37 and workers of B.J.P.

(f) The PW has suffered damages.

(g) The homicidal death of Mohammad Shafiq Adam Shaikh and of Abid in the morning occurrence, bullet injury to Mustaq Kaladia in the morning occurrence stands proved.

2. PW-136 :

(2.1) The witness stated that he is resident of lane No.3, Hussain Nagar, he is eyewitness, who came out after 9.00 a.m. on the day, he saw mob near ST Workshop and opposite Natraj Hotel, the men of the mob were in Khakhi Half Pant and T-Shirt and had saffron headband or throat band, there was disturbance and the situation was tense, the PW saw Hindus in the mob with weapons like Hockey, Sword, Pipe, Spear etc.

The witness further states that Muslims have requested the police to do something since the mob was marching ahead but the police did not take any action, the mob was injuring Muslims, the Muslims had to come back, the witness went near the gate of S.T. Workshop while the situation was beyond control, the police and their vehicle were there,

near the police vehicle at S.T. Workshop one white car came and A-37 got down from the said car, she talked to the police, the police then after did firing on Muslims, the police was in front of the Hindu mob, the police has also flung teargas, the Muslims were very much frightened, the situation was absolutely out of control, the witness was injured in firing on his left shoulder at about 10 a.m., Mustak of the area was also hurt, Mustak and Khalid were dragged inside by the witness and other boys of the locality, the police was in front and the Hindu mob was behind the police. The Hindu mob robbed and torched the shops near Nurani and then they unduly entered in Hussain Nagar, the Muslims were extremely frightened, then the Muslims went to Jawan Nagar towards Gangotri where S.R.P. people did not allow them to go inside S.R.P. Campus, some of them, more particularly, belongs to Mansuri community, they have chosen to go towards the Jawan Nagar pitfall (khado), since the Mansuri women have dressing resembling to Hindu and since the witness also wore clothes like Hindu and did Tilak (peculiar for religious Hindus) the witness and others could go to Kathwada (a near by small village) then they went to village Bahiyal where the witness took treatment, they stayed there for about 14 days.

(2.2) The witness has seen A-26, A-44 and Guddu (deceased) leading the mob near S.T.Workshop, there was damage and destruction of household and movable property of the witness, the Mustak died due to injury and Khalid became disabled.

(the way in which entire occurrence took place, element of pre-planning is too visible).

Guddu had died, witness has identified A-37, A-44 and A-26.

The witness further states that he has seen A-26, A-44 and Guddu in the incidents of torching near Nurani, he saw Mayaben near ST corner.

CROSS-EXAMINATION OF PW-136 :

(2.3) Exh.904 has been brought on record, the witness admits his signature on the same which according to him was at the time when after the disturbances they visited at his residence to see the destruction at his house, an attempt has been made to falsify the witness on the figures of the destruction of his house which is hardy material noting down the large scale destruction and damages in the Muslim locality at Naroda Patiya, therefore, held to have been obviously done during the communal riots.

(2.3.1) The witness does not know the name of the doctor who has treated him in the year 2002, the witness even does not know the name of the owner where he took shelter.

(2.3.2) This Court does not find any unusual element in this hence this does not affect the credibility of the witness. It is matter of common experience that at the time of such crisis the witness would like to interact with minimum persons to avoid revealing his identity in order to protect himself from any further assault.

What hesitation the witness may have to tell the

police as to from which route and how they went to Kathwada and from there how they went to Bahiyal hence it is safe to infer that the witness has not omitted reporting the said fact to the police but the brilliant probability is that, that the police has avoided writing all the said facts in the statement. As has been held the record of previous investigation is not faithful record.

(2.4) As has already been discussed the omissions and contradictions as far as the statements except of the S.I.T. are concerned, from the reliable part of the SIT statement it cannot be termed to be capable enough to doubt the truthfulness of the witness. This is in light of the facts and circumstances prevailing upon at that time, the police being occupied in law and order situation problems and the points noted in discussing the quality and kind of previous investigation done, the possibility cannot be ruled out that the police might not be taking down the version of PW properly. As it is held, the previous investigation is not held to be reliable as far as recording of statement is concerned.

(2.5) Exh.904 is in fact a statement where the surname of the witness is written as Pathan, through this piece of paper which is recorded by ASI, Naroda police station the witness seems to have stated about his lost household from his house hence this statement does not help the defence and in light of the discussion done about the previous investigation the question that the witness has not given name of the accused at Exh.904 does not have any value. The witness has repeatedly stated that the police was not taking down whatever was stated by the witness. This Court finds ring of truth in the version,

which strengthens the finding on previous investigation.

(2.6) The witness states the mob to be of about 150 persons. At paragraph 75 in the cross examination the witness states that he does not know exactly at what time he saw the white car of A-37 but he saw it before the disturbances were started and that he reconfirms that he saw Mayaben getting out of the car. The witness admits that he knows A-37 as M.L.A. of the area.

In the opinion of this Court, the disturbances have since started after arrival of A-37, it is clear that she is the kingpin of the riot and that conspiracy was hatched.

The PW does not know exact time of arrival of A-37 which adds to opinion of this Court about the truthfulness of the witness.

(2.7) On page-42 the witness has clearly specified that he knows all the accused he has named prior to the incident, the witness admits that with reference to the narrated incident he saw them for the first time, but merely that does not mean that he has seen them for the first time in his entire life, the PW is only telling that with reference to the incident, he has seen them there for the first time, hence the question of mistaken identity does not arise and the cross-examination on the aspect therefore, does not create doubt against the truthfulness of the witness. The witness has repeated that on that day, he has not seen the accused at any other place with reference to the incident. The prior acquaintance stands proved between the PW and A-26, A-44, A-37 and Guddu.

(2.8) The witness states about destruction at Nurani, the witness admits that the Kathwada village is at the distance of 8 to 9 kilometres from Jawan Nagar which they had to go by walk since no vehicle was available. In the opinion of this Court, this exhibits the peculiar tragic position prevailing on that day.

(2.9) During the cross-examination, the witness has admitted that he has to stay at Bahiyal village in different houses, he has not prepared the medical case papers or has not obtained the prescription, but the fact remains that he has taken treatment. Inability to procure injury certificate has been dealt with at Part-2 of the Judgement hence repetition is avoided.

(2.10) In the statement dated 16/05/2002, as has been reproduced the witness has stated to have gone on terrace of Gangotri, but the question here is the witness who has gone to Kathwada and Bahiyal would not say to the police that he went to Gangotri. This itself shows the statement of the police is not genuine and the version stated by the witness is truthful. This exhibit the working of the previous investigators.

(2.11) In paragraph 101, during the cross-examination, the witness has reconfirmed that the witness has also seen A-37 at the corner of Natraj Hotel while she was talking to Police. The distance from the place where the witness was standing and where A-37 was standing was of one minute. This proves the probability of perfect and right identity and chance of observing A-37 by the PW. The fact of A-37 to have been talking to local police is more natural and probable.

(2.12) At paragraph 106, the witness states that he saw the Hindu Mob doing stone-pelting on Muslims. In paragraph 123, the witness has clarified his view point stating that call it S.T. Workshop corner or call it Natraj Hotel Corner, it is one in the same place. He has also admitted in paragraph 126 that it is a point where different roads are meeting. At paragraph 135, the witness admits that he knows A-44 prior to the incident. This fact supports the witness was knowing the accused even prior to the incident, hence the point of T.I. Parade loses its significance.

The PW is an injured PW. He is reliable and truthful who does not seem to have any malice for the accused and that there is no reason to disbelieve him.

The conduct of the accused at the site shows their meeting of mind before reaching at the site.

FINDING OF PW-136 :

(a) This witness has established presence and participation of A-37 as kingpin of the riot alongwith A-26, A-44 and of deceased Guddu in the morning incident on that day beyond reasonable doubt. He himself was injured in firing that day at 10:00 a.m.

(b) The criminal conspiracy proves to have been hatched among the accused.

(c) The disturbances at the site started after arrival of A-37.

Mustaq died in firing in the morning occurrence.

(d) The PW suffers damages and destruction of his property.

3. PW-176 :

(3.1) PW 176 is an illiterate woman who was doing business of green vegetables in her cart. The witness went outside Patiya on the earlier day (27/02/2002) and saw on the road burning of cart of eggs and other disturbances.

(3.2) She states, at about 07:30 a.m., she went to purchase vegetables from Kalupur for her business, at about 09:00 a.m. she started her business placing her cart near S.T. Workshop, after doing the business of only Rs.80/= she went to receive phone call and learnt that at the other places, the atmosphere was tense and disturbances was started. While she returned, she saw a Hindu mob with saffron belt on their forehead with shorts and undershirt and some *Sindhis* with their routine dress of *Jabha-Pijama* (Robe gown and trouser / pent like). She heard screaming and the slogans being shouted by the mob of "Cut the Miyas, take them out and burn them alive". In this mob, she saw A-37, she left her cart and went home, took her children, locked the house and told her husband to be at home and then went to Jawan Nagar towards Gangotri from where she went to S.R.P. Quarters, but was not permitted to get inside, then went to Maidan from S.R.P. passing from Gangotri where she saw Muslims were sitting.

(3.3) As is deposed by her, she saw A-37 in the mob, she saw her around 09:30 a.m. to 10:00 a.m.

(3.4) The witness further states that at Gangotri Society, there was one factory of half pent and undershirt, she along with her children went to this factory, remained there for an hour to one and half hour and then after went to Gopinath Nagar (Gopinath Society). They ran to the ground near Gopinath where also they saw a very big mob of Hindus since her son insisted, they came back to Gangotri where the water tank is situated.

(3.5) So many Muslims were hidden behind the Water Tank where the men of the mob have thrown petrol, diesel, and the rags and burnt those hidden Muslims which the witness saw. They then returned to Gangotri Society and went on terrace.

(3.6) Those who were saved in the attack near water tank were coming towards Gangotri, even near Gangotri, there were mobs of Hindu, who were telling “You will now not live any more”. Then they went to terrace. In this mob, she saw Manu and Tiwari (A-28 and A-25) at Gangotri. Since the witness had good acquaintance with Tiwari, Tiwari was requested to allow her and her children to sit at his house at Gangotri, but Tiwari kicked the sister-in-law of the witness, as a result, Sabir, who was in the lap of the sister-in-law of the witness fell down and had head-injury.

(3.7) The witness stayed at Gangotri upto 11:30 p.m. and then came to Camp in the police vehicle. On the way from Gangotri to the police vehicle, the witness saw numerous dead bodies on the road.

(3.8) The cart and house of the witness were entirely burnt, she identifies A-28 and A-25 for the evening incident and A-37 for her presence in the mob she saw at morning.

CROSS – EXAMINATION OF PW-176 :

(3.9) As usual the cross-examiner has tried to highlight the application, its authorship, its contents etc. preferred before the S.I.T. by the witness. As has already been discussed, it is really not material as the master point is the application has been preferred for a simple reason and with a request to S.I.T. to take down the statement of the witness. It is admitted that Nazir Master and Mohammad Faruq have informed the witness that the previous investigation was improper, but then it does not make any difference when the witness herself is eye-witness to the incident. What is important in the deposition is that the witness was eye-witness who saw two mobs, one violent mob in the morning and another mob in the evening killing and burning alive the victims of the ghastly crime.

(3.10) The witness is an illiterate woman belongs to Karnataka who admits that she was not threatened by the accused, but then since it was not her case that the accused have threatened her, this part of the cross does not help the defence. This part of the cross also does not falsify any other witness who has deposed that he was threatened because the circumstances of one witness is not comparable with another witness and in the same way, the conduct of the accused with anyone of the PWs or victims can necessarily be not same with the another witness.

(3.11) On topography the witness admits that the way to go to the Muslim chawls is near the wall of S.T.Workshop, this way goes to Hussain Nagar then Jawan Nagar then Gangotri and Gopinath Nagar Society, after the Gopinath, there is open ground and Tisro Kuvo (Third Well). There is no doubt about this sequence.

The cross-examiner has suggested which the witness was not knowing. The suggestion was one can come to the open ground near Gopinath Nagar from the Krishna Nagar and from the Naroda, the witness had a wooden cabin of biscuit, peppermint etc. and she was also hawking or keeping in the hand cart vegetables to sell near this cabin, the distance between her house and the cabin was about 13 feet, the wooden cabin was being run by her daughter.

In the Kumbhaji Chawl, the houses were about ten in a line which had a common wall, the wooden cabin is on the way to go to Hussain Nagar, Jawan Nagar, Gangotri, the way to go to Kalupur from the residence of witness is about 8 to 10 minutes when the witness went to Kalupur in the morning, she did not find any disturbance and even after her return to home, she did not find any disturbance. All these suggestions are not part of prosecution case. What is the use of these cross has never been argued.

Most of the questions in the cross-examination are not based on any contention spoken by the witness in her examination-in-chief, hence qua this witness, that part of the cross is found irrelevant. What is notable in this cross is

through this cross, it becomes very clear on record that the *khancha* below the water tank which is in between Gangotri and Gopinath is the place which could be approached from Krishna Nagar as well as from Naroda hence the witnesses talking of having been surrounded by many mobs is absolutely probable and credible one.

(3.12) At paragraph 46, the witness clarifies that she heard the screaming and clamour at about 09:30 a.m. to 09:45 a.m. She learnt at that time that there was stone-pelting and police firing outside. The witness has even stated in her previous statement on 12/05/2002 that on the date, the call of Gujarat Bandh was given by V.H.P. (Para-47).

(3.13) The witness has also admitted that she told in the previous statement that the mob came from Krishna Nagar, Patia and from Saijpur Bogha which was of Hindus and that the Muslim could not resist it and could not face the attack, hence on account of fear, they went home. The witness admits that except the morning incident, timing of other incident is not known to her, this is suggestive that the timing of the morning incident is admittedly known to the witness as the illiterate person knows about the time.

(3.14) Her husband was injured in the incident who was hurt by the tear gas, the witness left house in the morning itself and she learnt at night when she could again see her husband that the husband was injured; the witness has specifically denied that she has not stated in the year 2002 that 'she does not know who the miscreants are and that she has not given name and details of participation of the identified

accused at that point of time'. The statement of 2002 has no significance.

(3.15) As is clarified at paragraph 64 that she knew the accused even before the incident hence the point of test identification parade is useless. In paragraph 65 and 66, prior acquaintance with the accused No.25 and 28 have been suggested, the witness repeats that A-25 has kicked a woman having a small child in her lap hence the child was injured. The suggestions for the false involvement of the accused have been denied.

(3.16) As far as A-37 is concerned, the words used in the statement that "having remembered I state that I saw Mayaben Kodnani (A-37) in the mob at about 09:30 or 09:45 a.m." If the witness states that ‘having remembered I state’, there is no wrong in it. Merely use of these words is not sufficient to disregard her evidence about the presence of A-37 which is found reliable and it has been testified by many witnesses also.

FINDING OF PW-176 :

(a) The presence and participation of A-25 and A-28 stands proved in the evening occurrence beyond reasonable doubt wherein, her husband was injured by teargas shell.

(b) The presence and participation of A-37 stands proved in the morning occurrence beyond reasonable doubt.

(c) From the facts and circumstances, probability of the accused to have hatched the conspiracy, to commit the crime

stands proved.

(d) The *khancha* is situated between Gangotri and Gopinath below the Water Tank. This place is such where it is quite probable for Hindus to surround or cordon Muslims as both these societies are societies of Hindus and it is adjoining to the Muslim locality of Jawan Nagar and Hussain Nagar. The PW saw the miscreants burning the hidden Muslims, there were A-25 and A-28 also were participating.

(e) The PW knows A-37, A-25 and A-28 even before the incident hence no doubt about identity.

(f) At night, while going to camp, the PW saw many dead bodies on the way.

4. PW-149 :

The PW at present resides at Ektanagar, who was resident of Street No.7, Hussain Nagar, is illiterate, but has learnt to sign, daughter Afsanabanu was tenant of Guddu (deceased accused).

(4.1) She states, at about 09.00 or 09.30 a.m. heard the screaming outside, came out, saw mob coming from Krishna Nagar and from Natraj Hotel to Nurani, saw this from the S.T. Workshop wall.

The mob was destroying, damaging, burning larry-gallas (carts and wooden cabins) and rickshaws, had saffron band on the forehead, at that time police, S.R.P. and K.K.

Mysorewala were present.

(4.2) At this time Mayaben (A-37) was in the mob, who came from the mob, talked with K.K. Mysorewala (Sr. P.I., Naroda Police Station). In the mob, there were Mayaben (A-37), Kishan Korani (A-20), Babu Bajrangi (A-18), Murli (A-2), Manoj (A-41), Ashok Pan Gallawala (A-45), Bipin Panchal (A-44), Jay Bhavani and Dalpat Chhara (both deceased), Tiniyo Chhara (A-5) son-in-law of Dalpat Chhara, Shehzad Chhara (A-26), Vijay Chhara (A-46) son-in-law of Shehzad - exempted, Suresh Langdo (A-22), Guddu (deceased), Hariyo (A-10) - not identified, Nariyo (A-1) - exempted, Tiniya Marathi (A-30) – instead of A-30 identified A-53 and Subhash Ramesh (deceased).

(4.3) After Mayaben (A-37) went away, police and private firing started and burning and torching near Nurani also started.

In this firing, Aabid and Hasan Qureshi were injured and died on the spot. In this firing Mohammad, Peeru, Khalid and Majid were also injured.

(4.4) At this time, Kudratbibi, Madinabanu and the witness went to Shri Mysorewala and requested him to provide help of ambulance for the injured Muslim persons in firing. At this time, Shri Mysorewala clearly told that 'he has an order to kill Muslims and not to save them'. Upon this, the witness told him saying that 'you are helping Hindus and why are you not stopping them'. On hearing this Mysorewala had beaten her, given 3 to 4 lathi blows to her and had threatened "are you

going or shall I shoot". On this, all the three Muslim women went away. The witness went to her home and was at home upto 12.00 noon.

(4.5) Then after the persons of the mob had marched ahead and were destroying, ruining and shattering the things to pieces, they were also torching the houses and were scuffling and were doing massacre, the Muslims were very much frightened, the witness then locked her house and went to the house of her daughter named Afsanabanu. She frequently came from there to take care of her house.

At about 2.00 p.m., the witness saw a physically handicapped boy, a son of Mullaji, to have been burnt, the witness was afraid, she returned to the house of Afsanabanu.

The witness tried to go into S.R.P. Quarters but was not permitted to go inside. Hence upto 7.00 p.m. sat outside S.R.P.Quarters.

While sitting outside the S.R.P. Quarters the witness saw a mob coming from the direction of Uday Gas Agency possessing different lethal weapons, some person had sword, some had Scythe, and some had Iron Pipe, Iron Rod and some had filled in kerosene and petrol tins in their hands. This mob broke the Coat of Jawan Nagar and entered inside Jawan Nagar. In this mob, the witness saw that Guddu Chhara (deceased), Hariyo (A-10), Nariyo (A-1), Shehzad (A-26), Dalpat (deceased), Tiniyo - son-in-law of Dalpat (A-5), Tiniya Marathi (A-30) and Vijay Chhara (A-46) were leading this mob.

(4.6) At this time, a boy named Aiyub was since afraid of the mob, he jumped from the terrace near Jawan Nagar near his house, hence both his legs were injured, because of the injury he could not stand up, the men of the mob have lifted Aiyub, thrown him in the rickshaw and burnt him alive by burning the rickshaw which the witness saw with her eyes. In this mob there was also one uniformed man with helmet.

(4.7) This mob has also burnt the house of Majidbhai situated in the last line of Jawan Nagar even while his family members were inside. At this time the Muslims felt that they would not be able to survive hence they dropped inside Gangotri society and through the farms the witness and her children went to Maidan in the company of many others. At this time there was stone pelting in big ground (Maidan), because of which the witness had injury on her left leg, they then after went inside S.R.P. Quarters through fencing, went to house of maternal cousin, met husband after 3 to 4 days, after 8 days went to see their house, found that there was robbing, destruction and damage for about one and half lakh, stayed at Shah-E-Alam Camp for 6 months, police recorded statement after 2 to 3 months, then recorded statement at S.I.T.

(4.8) From among the accused, she has named Guddu Chhara, Jay Bhavani, Dalpat Chhara and Ramesh alias Subhash Marathi had died as deposed.

Bipin Panchal (A-44), Kishan Korani (A-20), Tiniyo Chhara (A-5), Suresh Langdo (A-22), Shehzad (A-26), Ashok Pangalla wala (A-45), Manoj Videowalo (A-41), Murli Sindhi (A-2), Maya Kodnani (A-37), Babu Bajrangi (A-18) have been

rightly identified.

(4.9) A-1 and A-46 have been exempted from appearance on that day, but they have undertaken to have no dispute about their identity. They shall be treated as identified.

A-10 and A-30 were though present, have not been identified in the Court by the witness.

CROSS-EXAMINATION OF PW-149 :

(4.10) The witness states that she was residing at Hussain Nagar for last one and half year and prior to that right from her childhood she was residing at Chhara Nagar. Considering it, her inability to identify A-10 and A-30 grants benefit to them.

This witness is a peculiar witness for the reason that she had passed her childhood in Chhara Nagar, as is clarified at paragraph 50 it is Mahajaniya Vas, Chhara Nagar where even her children were born, the witness adds that there are two Chhara Nagars, big and small, in this Mahajanya Vas, small Chhara Vas, big Chhara Vas are situated (where majority of the accused were residing and even are residing today). This area is very close to Nurani Masjid. She also knows many of the persons residing around Hussain Nagar. Her identity about the accused is beyond any doubt as having undoubted prior acquaintance with the accused.

(4.11) In the cross, the witness admits that she did not have Ration Card, Election Card or Rent Receipt, but because

of this, it cannot be believed that she was not at all residing at Hussain Nagar, as not giving Rent Receipt is common in the hutment area and even not obtaining Ration Card or Election Card is also not something unusual for poor people who work very hard for their bread. Moreover, the dwelling houses were burnt hence the documents would not be available. Moreover, they have to often shift their houses according to the whim of landlord and hence it is known from the common experience of life that such persons do not insist for Rent Receipt and are not procuring Ration Card or Election Card as the address changes very frequently.

(4.12) Many, including this witness, have said that they used to take water from the public taps as at that point of time they did not have their own water taps.

On the ground that such fact is not mentioned in the panchnama, the witnesses cannot be disbelieved. As has already been discussed that the previous investigation was not reliable investigation as far as recording of statements are concerned, this Court found all the witnesses who are saying about the public water tap to be absolutely credible on the aspect. Nothing to doubt on the version of the PW.

(4.13) The witness states that the screaming she heard was heard while she was at her home, then she came out, stood near the S.T.Workshop, saw the mob of Hindus near Nurani, before firing took place. According to the witness, they went to Shri Mysorewala to request him, she went to the place near S.T.Workshop where Mysorewala was standing, there is nothing to doubt this version.

(4.14) On plain reading of para-37, the witness seems to be very natural. From para-37, it becomes clear that the police was standing with mob where even some Muslims were also standing.

(4.15) If the witness has not seen any boy or woman to have been burnt by mob, it does not mean that such an incident has not happened as the incidents have taken place on very large scale, have taken place in very quick succession, at times in a flash. Moreover, several offences were committed by miscreants and the power of observation of every individual differs, moreover it has limitation hence it cannot be accepted that unless every witness states to have seen all the incidents narrated, the happening of the incidents cannot be believed. It would be absolute misconception about the appreciation of evidence. Oral evidence of each witness should be appreciated in the facts and circumstances narrated or deposed by the witnesses. When the witnesses are to testify on a large scaled occurrences, consistency of the witnesses on every small small points cannot be accepted because it can happen that while Witness-X watches one incident the Witness-Y watches another incident. The oral evidence of these two witnesses therefore, cannot be compared. Even in the case when both the witnesses are talking about the said incident, their observation may not be similar and both of them do not remember similar aspects. It is also needed to keep in mind that the witnesses are talking about the incident after eight long years and that the passage of time is also an important factor to be borne in mind which certainly is not applicable to identify the accused as it is all unforgettable for the PW.

(4.16) If the witness is not remembering the person around her then, it is no ground to doubt her as has been rightly explained by the witness at paragraph 47, everyone has priority to save one's life and hence identifying the another sufferer is out of question.

(4.17) Here, it needs to be clarified that the cross examiner attempts to test memory of the PW and doubt the same on the ground that if the PW is unable to remember or know another victim, how can she remember the accused. In the opinion of this Court, remembering accused cannot be compared with remembering co-sufferer, the impression of the accused who has committed such a ghastly crime, who have destroyed and ruined the witnesses completely can never go from mind and the witness has no option but to watch that crime, hence the witness can never forget those faces which have done tremendous destruction, massacre and ruin everything of the witnesses and brought them on road in a few hours. This Court therefore, believes that the witness is absolutely dependable, trustworthy and believable one.

(4.18) On the aspect of topography, the witness is completely truthful, there is nothing in her oral evidence, which creates doubt about her knowledge on topography.

(4.19) According to the witness, there is a large ground behind Gopinath Nagar. At that time, there was no coat between S.R.P. Quarters and the large ground.

The large ground even exists today but after

Gopinath Society, there is Gokul Nagar Society and then the large ground is situated. Today the S.R.P. Quarters has compound wall partitioning it from the ground. Even near Gangotri, there is coat of the S.R.P. Quarters.

(4.20) As is stated by the witness at paragraph 57, it is very much possible to get into Gangotri Society from the route of terrace of Ghori Appa and then one can enter into S.R.P. Quarters. To enter into S.R.P. Quarters from this lane, there is a gap. As is suggested at para.58, in Gangotri Society, Hindus were inhabiting. (Adjoining to the Gangotri Society, there is Jawan Nagar, it is therefore, possible that near Gangotri, the Muslims were surrounded by many Hindu mobs.)

(4.21) Inability of the witness to file any complaint, to report to camp authority or to local police etc. have already been discussed at Part-2 of the judgment, hence repetition is avoided.

(4.22) At paragraph 82 this witness speaks about the then mental condition of the victims of riot, she admits that she did not feel like telling about the incident to reporters or media, channel, anyone of newspapers etc. because they were not going to render any help. In light of that her not telling about the incident to anyone seems to be very natural and justified.

(4.23) The witness states that though she is illiterate after this incident, she has learnt writing her name, this is with reference to her name written by her in the application before SIT. No doubt is created on the aspect.

(4.24) In the statements of 2002 what has been stated by her was not written by the police, which according to the witness, she learnt when she went to S.I.T.

The suffering and plights of the riot victims has been stated by the witness, she narrates that at the camp, the food was given in the open ground and after witnessing the incident of that day, she was unable to eat.

This witness states that it is not true that they had no fear after reaching to the camp. According to the witness, the fear had constantly remained in their mind. The witness states that her house was burnt and all the household and everything from the house was robbed, breaking open her lock.

The witness states that while drawing panchnama of her house, the police did not ask her anything and the police was writing of their own.

(4.25) She is an injured eye-witness and there is no reason to disbelieve the witness as has already been discussed in case of other witnesses if the injury certificate had not been obtained in the year 2002, it does not create any doubt about the version of the witness.

(4.26) The witness clarifies very important aspect about the position at the site, she clarifies that Jawan Nagar No Khado (pitfall) was also known (referred by many persons) as Ground of Jawan Nagar. There was a big open ground near the gate of S.T. Workshop at that time and it was possible to approach that ground from five different ways. The mob of

Krishna Nagar and Natraj mixed up near Nurani, there was a small open ground near Nurani.

(4.27) The witness admits that on that day, there was stone-pelting against stone-pelting between Hindus and Muslims.

This sounds very natural, the reaction of any person can be fight or flight. If a few of the Muslims have chosen to fight, they might have done stone-pelting initially, but as seems and as even stated by numerous witnesses, Muslims except for the initial time could not resist the assault and had to adopt flight tactic.

In the opinion of this Court, merely such a small natural unsuccessful gesture of a few Muslims cannot be given colour of free fight when after resistance every Muslim had to run away and they have not left a single stone unturned to save their lives.

(4.28) The witness admits that she has stated time on approximated basis and that she agrees that there could be variation of some minutes here or there. The witness had tremendous grievances against the attitude of the police, who according to the witness were with Hindus.

(4.29) In paragraph 141, the suggestion is accepted that Mob was too large which was uncountable and that in comparison to Muslim people, who were hardly 25, this mob was very very large. This suggestion and admission are self-eloquent. It is hardly needed to add that in case of attack and

assault, it is the majority which wins which was admittedly of Hindus hence what the Muslims did was for self defence. The witness was near the S.T. Workshop upto 11:00 a.m. She was at the junction point near S.T. Workshop where a very large mob was there. It is admitted by the PW that from the mob, none had beaten her. The reaction of the Court is 'so what'. It is not necessary to believe the PW, she must be injured or beaten PW. One can also be a simple eyewitness if luck favours.

(4.30) Paragraph 183 to 187 show that A-37 was known to the witness the reasons suggested to falsely involve A-37, A-45 are not believable one.

(4.31) The witness states that she knows A-20, A-18, A-2, A-44, A-45, A-1, A-10, the deceased accused and A-22, A-26, A-5, A-46 etc. all the accused prior to the incident. Meeting of all these accused at one point at the same time, can never be suddenly. This assembly itself shows pre-concert to have arrived among them. The prior acquaintance of the PW with all the accused is most notable.

(4.32) As per paragraph 212, she also knows A-44 so well obviously before the incident.

This part of the deposition clarifies that not holding of Test-Identification Parade is not material qua this witness.

(4.33) Paragraph 201 is a pointer to the helplessness of the victim while the incident including the firing was on going.

(4.34) This witness has seriously complained about the

conduct of the police stating that the police remained with the Hindus, were protecting Hindus and when she went to Shri Mysorewala after the firing took place she was given baton blows, the witness seems to be very much annoyed with the police according to whom the private firing took place even in presence of police, she has grievance against Shri Mysorewala who said that he has order to beat (or may be kill) the Muslims and not to save them, she confronted with Shri Mysorewala as he was supporting Hindus and was not stopping Hindus, at this time being angry Shri Mysorewala gave 3 to 4 baton blows to the witness.

(4.35) According to this witness, Shri Mysorewala is involved in the crime as the police and private firing started after talk with Shri Mysorewala and after A-37 left, Shri Mysorewala spoke "are you going or shall I shoot".

In the humble opinion of this Court even if the occurrence of Mr.K.K.Mysorewala is believed as stated then also, at the most what Mr.Mysorewala did is absolutely improper and an uncultured way to deal with any woman and that his attitude was not befitting to a Senior P.I. of the area but merely from the said conduct and attitude, it cannot be concluded that he has any bias, or he has aided the crimes, that he allowed the miscreants to commit the offences. What clearly emerges on record is the situation that was totally beyond his control. It is true that he ought to have taken stern actions right from 27th February, 02, his management for 28/02/2002 is not appreciable one, but all these points go to suggest that he has not acted efficiently and as per the expectation, but there is nothing to join him with the offences.

This court is of the opinion that when there is nothing to believe that he has caused hurt to this witness. It seems that on account of uncontrollable disturbances, tensed situation and pressure from different authorities and then pressure from the witness and the other two women to arrange for ambulance etc. he might not have behaved courteously, but then since it cannot be called voluntary and after all his duty is to maintain law and order his action gets benefit of doubt as it could be bona fide action and not bias against the witness.

(4.36) As reveals from the testimony of the witness that this Mysorewala played lead role in taking the injured to Civil Hospital who were below the water tank or say were victims of the *khancha* incident near Gangotri and Gopinath. This act of Mr.K.K.Mysorewala is a reason not to believe that he was party to the conspiracy and his lethargy and inefficiency was his connivance with the other conspirators. It is unfortunate that he was not sensitive enough to properly respond to the calamities being faced by Muslims on that day.

This Court therefore believes that it is not proper to hold that Shri Mysorewala was a party to any conspiracy and his act and omission is a proof to the said conspiracy.

(4.37) There is nothing on record to disbelieve the PW and to hold that this PW does not prove incident of Mullaji's son. Want of sufficient details and corroboration from other PW and for want of examining family members of Mullaji cannot come in the way when such a ghastly crime and massacre was committed.

The incident of Aiyub has been corroborated by many PW to have been committed by the mob there. It can also be believed that Aiyub died in the occurrence.

The incident of Majid cannot be believed because the name of the PW-156 is Abdul Majid and he said that his family was not burnt in his house. There is nothing on record to believe that except Abdul Majid there was any other Majid in Jawan Nagar. No such panchnama or the inquest on the record. It is not probable that PW is telling about another Majid whose family was done to death by the mob by torching them alive in the house. Hence, this incident (Majid) shall be held to have not ensured corroboration. The hard reality cannot go unnoticed that there happened many occurrences on that day, many victims have migrated, all the occurrence could not be brought to book.

It is doubtful as to the PW talks about which Majid other than PW 156 who denies for such occurrence. Hence, incident of Majid gets no support.

(4.38) Over all this witness is extremely truthful, natural, credible one and proves the involvement of all the accused identified by her in the charged offences and that this witness is one of the star witnesses who being injured eye-witness can never leave aside the real culprits and falsely involve the named accused. She has proved the prosecution case beyond reasonable doubt qua the named accused.

(4.39) A-10 and A-30 have not been identified by the

witness and at the same time, no TIP for A-10 and A-30. These accused need to be given benefit of doubt qua the PW.

FINDING OF PW-149 :

(a) The presence and participation of A-1, A-2, A-5, A-18, A-20, A-22, A-26, A-37, A-41, A-44, A-45, A-46, deceased accused – Guddu, Bhavani, Dalpat and Ramesh in the morning incident stands proved beyond reasonable doubt.

(b) Several Muslims died in firing. In the morning, there was private firing also. Abid and Hasan Qureshi were injured and died on the spot whereas Mohammad, Peeru, Khalid and Majid were injured in firing.

(c) The incident of torching 6 to 7 family members in the house of Majid are not proved to have occurred as far as this PW is concerned.

(d) The incidents of physically handicapped son of Mullaji and death of Aiyub was burnt alive by throwing in rickshaw are believed to be true.

(e) A-10 and A-30 are granted benefit of doubt qua the PW.

(f) The PW has suffered damages at her house.

(g) The conspiracy seems to have been hatched among the accused.

(h) Presence and participation of A-1, 5, 26 and 46 stands

proved as leaders of the noon occurrence in breaking the wall of Jawan Nagar and unduly entered into Jawan Nagar with lethal weapons.

5. PW-192 :

This witness is an injured eyewitness who is resident of Hussain Nagar, Street No.1 for 22 years, She runs Nurani Kirana Store, resides with family. Her house is opposite Kumbhaji chawl, one of the door of the house opens at Kumbhaji, another at Hussain Nagar and one more gate opens on S.T. Workshop Road. Her husband works at S.T. Workshop and in spare time plies rickshaw, her son Imran runs Tea-Stall and Pan-Stall on the road.

(5.1) On the date of incident, at 06:00 a.m., she went to Kirana Shop, opened it up and her Son Imran opened his tea-stall and Pan-Stall on the road. Her younger son Kadir was made to sit at her Kirana Store and about 07:30 or 08:00 a.m., she went to relieve Imran and sat on the Tea-Stall and Pan-Stall where police came and told her that 'there is call for Bandh and disturbances are there, hence you close your shop'. Imram was standing there to collect the selling material of both the shops in Cart and brought the said Cart at her home at Street No.1, the witness then stood at S.T. Workshop Point where at present, there is police chowki.

(5.2) At about 09:00 or 09:30 a.m., she saw mob coming from Natraj and Krishna Nagar, the mob of the Krishna Nagar was throwing stone and throwing bottles on the Masjid and the mob from Natraj was throwing stone and bottles on Muslims.

In this mob, there was Mayaben (A-37), Manoj (A-41), Bipin (A-44), and Santosh (A-58), whose shop is at near Kamla Welding at Kuber Nagar, Guddu (deceased), Naresh (A-1), and Suresh (A-22). Mayaben (A-37) was provoking the people and was telling 'come let us go ahead' and 'kill'. At this time, police came, and did firing and bursted teargas on Muslims. At about 12:00 or 12:30 p.m., five Muslims were injured in firing, who were brought in her corridor.

(5.3) The mob was marching to Muslim chawls. she went to terrace of her house along with children, she saw from terrace of her house, where from entire road was visible, that the men of the mob were slaughtering the people. Hence, the PW got down from terrace, and situation of stampede was created, she was running here and there and then she went to terrace of Ramzani Pinjara along with children, while going to terrace of Ramzani, somebody hit hockey on her right leg and since burning rags were thrown from the S.T. Workshop, the witness and her daughter had sustained injuries of burns on their hands and legs. The first house of the street which was of Ramzani was torched by the mob, the mob was speaking all filthy, they were screaming and were giving slogans of 'cut - kill'. the witness saw all these from behind the curtain, then she went to terrace of Ramzanibhai.

(5.4) From the terrace of Ramzanibhai, she saw the men of the mob were torching, killing the people and were killing and cutting Muslims which the witness learnt while seeing towards public toilets at Jawan Nagar.

At night about 12:00 or 12:30, went to camp.

(5.5) A-22 was exempted on that date from appearance on the condition that he does not challenge his identity, Guddu is dead, identified Manoj Videowala (A-41), Santosh Dudhwalo (A-58), Naresh (A-1), Mayaben (A-37), Bipin (A-44).

CROSS-EXAMINATION OF PW-192 :

(5.6) As is elicited in the cross-examination, on 27/02/2002 the witness was at Nadiad and at about 9.00 or 9.30 p.m. while they were returning in their own rickshaw from Nadiad to Ahmedabad she saw wooden cabin was torched between Krishna Nagar cross road to S.R.P. Cross Road. She seems to be aware in general of topography.

(5.7) As discussed, on the date of the incident the atmosphere was not disturbed in the morning. Ignorance of the witness about kilometer is not something abnormal, many people are ignorant about such things but that does not mean that such person is speaking lie, the cross to falsify the presence of the witness at the site of the offence has absolutely no substance and on the contrary even after extensive cross it stands proved beyond reasonable doubt that the witness was at the site and she is eyewitness of the incident as it is very much probable for any person to witness the incident as have been witnessed by the PW.

(5.8) The witness states that in the house of Pinjara there were about 200 to 300 Muslims who were hidden on the terrace, they were sitting and were rising up to see quite often.

In the opinion of the court, it is common tendency that when one is in hidden position one would always attempt to peep out of anxiety, it is quite natural attitude hence credible.

(5.9) The witness was given hockey blows by the mob which has hurt her, the witness has taken treatment at Camp, the witness states that all her's was robbed and burnt, husband met at the Camp after 8 to 10 days, husband had mental illness because of the incident and still has sleepless nights, the witness had a talk with her husband after about 6 months that burning rags were thrown from S.T., while the witness was at camp, she was brought at her home and shops to assess her loss (to draw the panchnama). This proves her version of her damages is truth.

(5.10) The witness has stated before the S.I.T. that while recording her statement dated 11/06/2002 though she has stated the names of Mayaben Kodnani and Santosh Dudhwala (A-37 and A-58 respectively) the police at that time has not written these names. The witness has reasonable good knowledge about the topography. The witness was wearing *burkha* (veil) as she had performed Haj, which seems to be quite satisfactory, in fact it is not argued as to for which purpose, any question to any PW in their cross were asked. As it may be, but nothing in the cross is capable to falsify the witness.

In the statement of the year 2002, there is mention of injury by hockey to the witness, which shows that the witness must have stated everything, but the police seems to have written selected contentions. This proves her injury in the

incident.

(5.11) Certain immaterial aspect like, while the witness saw towards public toilet, she saw that the mob was burning everything, is though not stated before the S.I.T. is not very material or is not falsifying the witness, the witness is not required to speak like parrot, this shows her natural version.

(5.12) It is true that the witness has stated before the SIT that she saw A-37 and A-58 in the mob from about 50 meters' distance, but in the Court, she says that she cannot assess about the measurement or the distance from where she saw the two accused.

This contention is not a contradiction if the statement and the deposition are appreciated in proper spirit as the witness is an illiterate person and she would obviously not spoken about the measurement or the distance in exact meters, but as is learnt from common experience, the person who records the statement if insists for the distance by leading on and if some time options are given, the witness abruptly speaks for one of the options, but merely that fact is not weighty enough to disregard the evidence of the witness which is otherwise seems to be stainless and most credible one as the witness is very natural and honest enough to say that she is not able to speak about distance in meters. This shows that she is not a tutored witness and hence strength to her credibility is added.

(5.13) Paragraph 109 suggests that A-58 has his shop of milk in the locality and the witness does business in the same

locality hence the witness would know A-58 by face and name in any case. The witness denies her version at SIT on 24/09/2008 to the effect that in 2002 the witness was going to take milk for her tea-stall at the shop of A-58. Here it seems that this fact though she might have told at SIT might have gone out of her notice or she might have been afraid of telling these aspects, but such attitude is too common and does not bring any blame on the credibility of the witness.

The PW has later volunteered that she knows the identified and named accused from previously. Here, she only denies to have been going to the shop of the accused for milk for her tea-stall (para-128) but, she does not create doubt on knowing A-58 from previously.

(5.14) As suggested at paragraph 113, A-37 is doctor by profession and has her hospital at Saijpur Bogha road viz. in the locality itself. The witness has seen her photograph in her election propaganda in the hording, banner etc. The witness states that on that day when she saw A-37 for the first time, she was standing in the line of Nurani. Even another witness has also seen A-37 near Nurani where from according to witness, S.T. Workshop is not far of.

(5.15) According to paragraph 122, the witness has talking term with A-41, the shop of the A-41 is nearby and in the locality.

(5.16) A-22 was a customer of the witness who used to consume tea.

(5.17) If the witness has not seen Bipin Auto or has not talked to Bipinbhai that does not mean that she was not knowing A-44. It cannot go out of the notice that the witness was running two to three of her shops and that the show-room of the Bipin Auto was just nearby to the site of offence, hence unless there is specific evidence or admission to the effect that she is not knowing A-44 such negative aspect cannot be believed. During the entire cross, there is not a whisper to the effect that the witness was not knowing A-44. It is therefore, clear that she was knowing A-44 prior to the incident like all the other accused mentioned herein above.

(5.18) The witness has no documentary evidence to establish that her dwelling house was in Hussain Nagar since everything was burnt in the disturbances and riot of 2002. It is suggested to the witness that along with the identified accused, there were other persons in the mob for which the reply has been given in assertion. Here, it is voluntarily clarified that, but 'she does not know those persons'. This is also clarifying that the identified accused are known to the witness before the incident. This shows prior acquaintance with all the identified accused.

(5.19) It has been admitted that the mob was throwing stones and glass bottles which were all lying on the road.

(5.20) As asked in paragraph 146, the house of Ramzani Pinjara is behind her lane which is lane No.IV. This question and reply show that the witness was living at Hussain Nagar.

PW 189 is Imran who is son of this witness, he has

been examined and there is nothing in his deposition which is not tallying with this witness.

(5.21) Para.128 of testimony clarifies that the PW knows all the accused identified by her before the incident and that they were in front place in the mob on that day.

(5.22) Para.128 clarifies and confirms that they were not onlooker and or present there out of curiosity as they were in the front of the mob and others were behind them. Their place in the mob is speaking evidence of their active involvement in the crimes and about their oneness, about their common design etc. This shows conspiracy among the accused.

(5.23) During the entire cross, this Court does not find any material because of which it can be believed that the witness is not a truthful and reliable witness. As a matter of fact, this witness is truthful, natural, not tutored and is not trying to falsely involve any accused and is quite credible. Her version is quite probable.

FINDING OF PW-192 :

(a) The PW involves A-37, A-58, A-22, Guddu, A-41, A-1 and A-44 in the morning incident as leaders for charged offences beyond reasonable doubt with the fact that they were in the mob throwing stones, glass bottles, etc. (not for A-37).

(b) The PW was injured by hockey blow and was treated at camp.

(c) A-37 was provoking, instigating and leading the mob.

(d) Conspiracy seems to have been hatched among the accused.

(e) Five Muslims were injured in police firing in the noon at 12:00 to 12:30 p.m.

(f) The PW has suffered damages.

6. PW-198 :

(6.1) This witness has deposed as under :

"I am resident of Street No.1, Hukamsinh-Ni-Chali right from my childhood. In the year 2002, I was residing there with my family, my mother, Mumtaz, the then wife Gosiya and son Akram had died in the riot of 2002.

At about 08.00 a.m - 08.30 a.m., I woke up, I heard shouting and screaming from the chawl, the people were telling that the mob has approached, mob has come. Hearing all these, I came out at the point of S.T. workshop, at that time surrounding carts and wooden cabins were open, the jeep of the police came, closed down the carts and wooden cabins which were open. There were mobs near the gate of S.T. Workshop and gate of S.R.P. Quarters where Bipin Auto Centre was there. The men of the mob had saffron band on their forehead and they had sword, pipe, trident in their hands.

At about 09.30 a.m., I saw Mayaben (A-37), Babu

Bajrangi (A-18), Sachin Modi (A-52), Ashok Pan Galla Wala (A-45), Manoj Videowalo (A-41), Suresh Langdo (A-22), Haresh (A-10), Guddu (deceased) and Bipin Autowala (A-44). I saw all of them leading the mob opposite the gate of S.T. Workshop and they were also seen in the mob of S.R.P., both the mobs were mixed up then.

The men of the mob were torching the surrounding carts, cabins, dwelling houses and were attacking on Nurani Masjid, some of us went to persuade the nine accused I have named near Nurani Masjid, but they have not paid any heed and have started shouting and reciting slogans 'Cut-Kill', and they were stone-pelting on Muslims. We came back to near Police Chowki. Because of the stone-pelting and on account of their non-acceptance to our request, we were frightened, hence we came back near Police Chowki.

The police jeep parked near S.T. Workshop started firing and bursting teargas shells which has injured about four Muslims. When Muslims were running towards Muslim Chawls, the men of the mob have also chased them and they have robbed and burnt the houses of Muslim Chawls. Then, we Muslims went to Gopinath–Gangotri society situated behind our chawls and hidden ourselves there.

Upto 04.00 p.m., we remained at Gopinath Nagar and Gangotri Society itself. While we were sitting there, Tiwari (A-25), Shehzad (A-26), Jay Bhavani and Guddu (both the deceased) came to us and told us that 'you go away from the backside to S.R.P.Quarters'. Since Tiwari, Shehzad, Jay Bhavani and Guddu were residing in our own locality, we believed their

advice to be true and we have started in their company. While we were to come out of the place at the gate of Gopinath Nagar, we found the men of the mob have hidden themselves and as soon as we came out we were surrounded by the men of the mob. In this mob of hidden persons, there were Sachin (A-52) and Suresh (A-22), at this time, we came back to Gopinath Society to save our lives. There is one corner in the turn (*Khancha)* near the Water Tank at Gopinath Nagar Society. We entered in that corner thinking that the mob would go away, but the persons of the mob have started killing us and torching and burning some of us here itself and the massacre continued.

At 04.30 or 05.00 p.m., three of my family members viz. my mother, wife and son had died in this incident of *Khancha*. Other persons like my maternal aunt Rabiya, niece Farhana, our neighbours like Reshma etc. and other Muslims also became victim of the massacre here at this place. Though I am not sure about fixed time of this massacre, but in any case it was evening hours.

I saw Tiwari with sword, Jay Bhavani with wooden stick, Guddu with sword, Suresh Langado with scythe (dhariya) and Sachin with pipe in this mob who were responsible for this massacre at the *khancha*. While this massacre was on going, it was time of Magarib Namaz meaning thereby it was evening time. I interfered to save my son Akram from this Massacre, my right eye was injured due to burn and injury on my right hand was due to scythe and then by saving myself from the incident, I have hidden my self at Gangotri where other Muslims were also sitting.

When the mob dispersed, we Muslims thought to go towards S.R.P. and we were accordingly slowly going to S.R.P., at that time, Babu Bajrangi was standing along with the mob at the ground of Teesra Kuva hence having been afraid, we stood there itself, at this time, the mob started beating and killing us and the mob continued beating and cutting us, four of Muslims were done away by the mob. Hence, I went back to Gopinath out of fear and then hidden myself there.

At late night, we were taken to Relief Camp where police recorded our statements, after six months, I returned to my residence at Street No.1, Hukam Singh Ni Chali. I then went to Naroda Police Station thinking that our case would be heard, but nothing was happening there and none was giving heed to us, hence I returned to my home. Then after I had given my statement at SIT, given application at Exh.1364 at SIT, I am aware that Guddu and Jay Bhavani had died. I identified A-37, A-18, A-25, A-45, A-22, A-52, A-26, A-44 and A-41 .”

CROSS-EXAMINATION OF PW-198 :

(6.2) This witness is injured eye-witness. The burial receipts, P.M. Notes etc. for the mentioned family members and the known persons who were victim of the ghastly occurrence are all on record which shall be discussed at an appropriate part of the Judgement. Since the PW is injured, he is not likely to lie or to falsely involve any accused and leave aside the real culprit.

(6.3) The witness states that his brother, Yunus resides at

Street No.6, Hussain Nagar and father was residing at that point of time at Pandit-Ni-Chali, the witness states that this Pandit-Ni-Chali is also known as Hukamsingh-Ni-Chali and his father was residing with him.

(6.4) The fact that he has not told about the occurrence he has witnessed on that day, till 2008, is not the point to disregard the evidence of the witness in light of the reasoning already discussed for such fear and its impact at Part-2 of the judgment.

(6.5) After the panchnama of the house, the witness went to his native, Hubli, Karnataka along with family where he stayed there for about four months. The substantial part of the cross-examination is based on contents of Exh.1364, but in the opinion of this Court as has already been discussed earlier, insertion of some contention or omission of some contention in such formal application does not prove anything to discredit the witness.

(6.6) The witness has also been cross-examined on topography, but nothing has been elicited to falsify the witness on this count as well.

(6.7) The witness is unaware about the clothes worn by the identified accused. He is also unaware about the kind of weapon they have possessed on that day, the witness however, confirms that there were weapons in their hands. The witness states that when he identified the accused they were in the mob of 50 persons near Nurani. It is possible that the PW might not have observed all those things but that does not

mean that he speaks lie. On the contrary, it is natural that the PW in the fact situation cannot observe all such details. The PW is truthful and natural.

(6.8) The witness has seen the occurrence of his mother, the occurrence of Jadi Khala was seen near the ground where she was cut and killed, she was then burnt and then was thrown in a well which the witness has seen. In light of the testimony of assignee officer Shri Tarun Barot and the Chief Fire brigade Officer any dead body to have been thrown in a well is doubtful. The deaths of many deceased victims have been witnessed by the PW.

The witness has also seen other three persons being cut and killed, they were also burnt there. This is found probable while appreciating the overall fact and circumstances of the case.

(6.9) The witness states that he ran away after seeing some part of the occurrence. The witness admits that he has stated before the S.I.T. that apart from his three of the family members, he has also seen death by killing and burning of Jadi Khala, Shabbir, Mehboob and wife of Mehboob, Sayra. The witness has not returned to the *khancha* after the death of three of his family members and he went to the terrace of Gangotri.

(6.10) The witness had identified the dead body of all three of his family members, he has produced burial receipts for compensation and has not produced P.M. Notes or any other such documents. The moot point is the product of P.M.Notes is

not requisite to prove murder of the deceased. In the facts of the case the presumption of death can be drawn by the Courts. It is drawn for the three death as they have neither been heard nor seen by even PW since last seven years.

(6.11) The witness has seen tea-stall, grain-vegetable shops etc. opened on that day. It is elicited that the witness has stated before the SIT about presence of A-37 and A-44 in the evening at about 05:30 or 06:00 p.m. near Highway opposite the shop of A-44, but since the PW has not so stated in his chief-examination before the Court, it needs no discussion as such omission is favouring the accused and the interest of the defence is not prejudiced.

(6.12) In the opinion of this Court, the witness has not stated about A-37 as far as the evening occurrence is concerned in his examination-in-chief. This proves that the witness was not a tutored witness or is not a witness who stepped into the witness box after preparing the statement by heart. This witness has lost his family members in the riot. He has no reason to falsely involve anyone and to leave aside the real culprits.

(6.13) At paragraph 99, the witness denies his presence near the Uday Gas or at Naroda Patia Police Chowki in the evening which guides that it is not safe to believe this witness for the evening as far as the place of street where Uday Gas is situated and the place of Naroda Patia Police Chowki. Here, it needs to be noted that what the witness states is about *khancha*, ground etc. which is the main evening incident and it is not near Uday Gas or S.T.Workshop Gate. The PW states to

have seen A-25, 26, Bhavani, Guddu, A-18, A-22 and A-52 in his chief which has remained unchallenged which proves their presence and participation in *khancha* incident with lethal weapon.

(6.14) The witness is unable to state the names of the persons who was standing with him on that morning, but merely that does not mean that he cannot remember the accused whose memory must have been printed in his mind for their involvement in the ghastly incident. These two are incomparable.

(6.15) Remaining contradictions and omissions asked are either included in the statement in other words and some of them are absolutely not material and in no way proves that the witness is speaking lie or is contradicting the exact version given by the PW before SIT.

(6.16) This witness seems to be perfectly credible except for any incident if he claims to have seen from the point of Uday Gas Agency and from S.T. Workshop at the time of 05:30 p.m. or 06:00 p.m. or about well etc., but it needs a note that the witness has not so said in his examination-in-chief hence the cross-examiner has created the ghost and then killed it. Thus, in nutshell, the witness is truthful, is an injured eye-witness who has witnessed the incident of killing of his mother, wife and son and has no reason to falsely implicate any of the accused to whom all he knew even before the incident.

(6.17) The prior acquaintance of the PW with the accused stands proved. The PW knows the named accused even before

the incident who all belong to the same area.

(6.18) A-10 has not been identified hence benefit of doubt to him.

FINDING OF PW-198 :

(a) Exh.1364 – application of S.I.T., burial receipts at Exh. 2358, 659, 715, 2357, 625, 236 of relatives and neighbours proves death of the said relatives and neighbours in the riot - 2002 viz. death of mother Mumtaz, wife Gosiya, son Akram. The PW also is an eyewitness of death of Rabiyabibi, Reshma, Farhana etc. All these deaths were caused in the evening occurrence.

(b) The presence and participation of A-18, A-22, A-37, A-41, A-44, A-45, A-52, deceased Guddu in the morning occurrence stands proved by the PW eyewitness.

(c) From the facts and circumstances, probability of the accused to have hatched the conspiracy.

(d) In the evening incident, the presence and participation of A-22, A-25, A-26, A-52, A-18, deceased Jay Bhavani and Guddu stand proved. Three family members of PW mother, wife and son were killed here. Among the live accused, A-25, 22 and 52 were with lethal weapons participating in massacre at Khancha.

(e) Benefit of doubt to A-10.

(f) He himself was injured in evening occurrence.

(g) The death of mother Mumtaz, wife Gosiya and son Akram are presumed to had been occurred in the evening occurrence.

7. PW-236 :

(7.1) The witness has studied upto Std.VI, conversant with the Gujarati language, at present occupation is rickshaw driving, in the year 2002 had his own shop of mattresses, resident of Naroda Patiya, at about 8.30 or 9.00 a.m. in the morning so many people gathered on the road, the witness therefore went near Natraj Hotel, saw mob of 5 to 10 thousand persons, Mayaben (A-37) came there in Maruti Frontie with her P.A., they got down from Car, by seeing her, the people who were standing there shouted the slogans of 'Jay Shri Ram', Mayaben (A-37) delivered a provoking speech, the gist of speech spelling her instigation to the mob is, “I have seen dead bodies of Kar Sevaks at Godhra. You Ram Bhakta – devotees of Ram or devotee public of Ram should kill Muslims here, cut them, as the Babri Masjid had been demolished, the Masjid here also should be destroyed, I am with you etc.”, you will have no difficulty. She then left.

(7.2) Then after people were provoked and men of the mob came to our locality at Nurani. The mobs were accompanied by police, the witness then returned to his locality towards Nurani, the mob was coming to his locality, upon seeing this the witness ran away. At that time, the mob came near Nurani, pelted stones to Muslims and police did firing and burst tear gas for about 10 to 15 minutes. Then the

Hindu Mob went to Natraj. the witness was on first floor of one incomplete building near Nurani and saw everything by hiding himself.

(7.3) At about 11.00 a.m., on the S.T. Workshop Gate, Mayaben (A-37) came in white Maruti Frontie Car followed by Trax Jeep from Krishna Nagar to S.T. Workshop, it was parked in the position by which it was facing S.T. Workshop, Mayaben (A-37) gave signal to the mob near Natraj and she called upon the mob on the Gate of S.T. Workshop by indicating them to come. About 100 leaders came where P.A. of Mayaben (A-37) came. Mayaben (A-37) was discussing something with all of them and then instructed her P.A., the P.A. took out the weapons from the Trax Jeep, the weapons were sword, Bhala, Trishul, revolvers etc. Under the instructions, her P.A. gave all these weapons to the leaders of the mob, then after the vehicle of Mayaben and the Trax Jeep went towards Krishna Nagar and took turn in the Street of Uday Gas Service.

(7.4) After Mayaben (A-37) went away, the men of the mob including the P.A. had attacked on Nurani where the men of the mob had also burst the Gas cylinder and the whole tanker of Kerosene was pushed inside the Nurani because of which Nurani was damaged and destroyed.

(7.5) Then after, the men of the mob have torched shops near Nurani and then the mob forcibly and unduly entered in Hussain Nagar, on the way of Jawan Nagar there were burnt dwelling houses and burnt human beings, the witness saw the mobs forcibly entering into Jawan Nagar, Hussain Nagar etc. but other things were heard by him.

(7.6) Out of fear, the witness then went to his home at Khemchand-ni Chali behind Nurani and along with his family, he went to Masjid-ni-Chali where Muslims inhabiting around were found assembled. On 1st March at 12 noon, they were taken to camp by police where they stayed for four months.

(7.7) The witness went to lodge his complaint on 12/03/2002 at Naroda Police Station, where police declined to take his complaint and told him that 'he does not know Mayaben', (meaning thereby forget name of Mayaben) police advised him that he should only let panchnama of his house be drawn and he should not indulge in all such things otherwise he would be facing difficulties. Then after on 09/05/2002, police had drawn panchnama of his house but did not note down his complaint.

In the facts and circumstances of the cases, such attempt by the police to not book certain accused is most probable. The PW is speaking truth on the aspect as had it not been so after SIT, so many new accused would not have been added.

(7.8) In the incident, the furniture, households etc. of his house were ransacked, destroyed and damaged. In June 2002, they came back from camp, at that time they had no employment or any occupation, at the initial stage, N.G.O. was giving them Grain Kit.

(7.9) Shehzad (A-26) offered him bribe, since his name has come in riot cases he was ready to give money and that he

said that the witness should accept money and give affidavit in favour of A-26. This offer was turned down by the witness, the witness declined. Shehzad (A-26) had then threatened the witness that 'in this riot, you Muslims have been saved, but in next riots, I will kill.' The attitude of certain accused of playing with administration of justice has been exposed through the PW.

(7.10) The witness knows the P.A. of Mayaben by seeing him and he knows the leaders of the mob also by seeing, he does not know their names, he is however, able to identify all of them.

The witness identified A-37 and A-62. The witness identified A-20, A-17, A-2, A-24 and A-44 as leaders of the mob. One who has threatened the PW was not present in the Court, but the PW knows him very well, the said person is Shehzad (A-26).

A-26 (Shehzad) was exempted on that day from appearance who had no dispute for his identity.

CROSS-EXAMINATION OF PW-236 :

(7.11) The incident of threat to the PW by A-26 took place in June 2002. On the question to the tune that why no police complaint was lodged against A-26, the witness volunteers that they had no trust in police, the witness has not complained to any N.G.O., he however gave the complaint at camp about the incident and named Mayaben Kodnani, they have also taken his signature and read the complaint before him, the complaint he

has registered was not taken on the record which the witness learnt later when he was not given protection.

(7.12) The witness has declined some part of his statement to have been stated but except one or two exception by and large the investigation done by the SIT is not objected to and is reasonably good. It is not found probable that SIT would write such contents of their own. It seems that either the witness has forgotten or he has some apprehension in his mind that on account of the particular part of his statement he would not be properly projected and his version would not be taken in the spirit as is expected by him, hence this part of the cross-examination shows that the part of the statement in the inverted coma must have been spoken by him only and then it must have reduced into writing.

(7.13) What is most notable part of the statement is that there is clear reference about A-26 having persuaded the witness to convince Muslim witnesses. It is true that in the statement at S.I.T. there is no mention about slogans having been recited of "Jay Shri Ram" but merely that does not mean that the witness is speaking lie as the slogan is in no way an incriminating part but, merely mental state or spirit on the day and that the witness is not expected to speak parrot like and that even if the part of recitation of slogan is taken out from the deposition the incriminating element does remain very much within, hence the omission is treated as not material and not affecting the prosecution case in any manner.

(7.14) In view of para. 45 and 46, it is clear that the witness was already knowing A-62 prior to the incident, but

was only not knowing his name hence there is no chance of any mistaken identity. He has however, knowing the A-62 as P.A. to A-37. This is how he is introduced on the record.

The witness is also knowing A-37 prior to the incident as reveals from para 47 to 49.

(7.15) The witness has not named A-2, A-17, A-20, A-24 and A-44 in the statement before SIT. No TIP was held. The witness has not given any description of the accused hence even if the involvement of these five accused might be true, it is hardly proper to allow such chance introduction of or abrupt identity of the accused to be base to prove guilty of the accused. The accused remains unaware about any case having been put up by the witness against them. The judicial conscience does not permit such involvement of the accused to be the sole base.

Firstly, there is abrupt identification and secondly in light of para-50 and 51 of the cross-examination, it is clear that when the witness has not given name or even description or identity mark of the accused, it would not be proper and just to take such identity as evidence. The general statement that the witness saw many persons in the mob and he knew the accused, but he did not know name of the accused is too general to be appreciated and considered to bring home the guilt of the accused.

(7.16) Since the names of the five accused, their description, their identity mark etc. were not mentioned in the S.I.T. statement. The involvement by the oral testimony of this PW alone shall not be treated as completely dependable

evidence. However, their identity is not lacking any bona fide and there also does not seems chance of false involvement but, then, it is not dependable evidence. This identity is therefore, only taken as circumstance against A-2, 17, 20, 24 and 44 which shall only be considered if clear and clinching evidence is gathered on record to involve the five accused in the crime beyond reasonable doubt but, in absence of any such material they shall avail benefit of doubt even for this circumstance.

(7.17) The witness is truthful and there is no chance of the mistaken identify of the named and correctly identified accused. It is true that even A-62 has not been named in the SIT statement, but he was described with the identity as P.A. to A-37 which is sufficient to give reasonable effective opportunity to defend him. This description is satisfying way to involve A-62 in the crime in the statement of SIT. Considering the above discussion, this Court is not inclined to believe that the witness has not identified the true accused.

(7.18) The cross-examination of the witness on Exh.1663, his application before the S.I.T., clarifies that the witness has mentioned in this application that the F.I.R. registered by him was not taken as was told by him. The witness explains that he said so since his F.I.R. has not been taken on record.

According to the witness, when S.I.T. came he could muster courage otherwise he was told that now no question of giving any complaint anywhere as everything is over. This revelation has ring of truth.

(7.19) It can be noticed from the cross-examination at para

66 that Natraj Hotel was situated opposite Nurani and one may not even take 2 to 5 minutes to reach there, the area of Naroda Patiya is known as Naroda Patiya because of the bus stand named as Naroda Patiya, the witness admits to have stated approximate timing, the suggestion is accepted that the call of Gujarat Bandh was given on account of the Godhra massacre on the previous day. The information elicited prove no defence in the opinion of this Court.

(7.20) Para 74 is the suggestion which confirms that if the vehicle from Krishna Nagar is to be brought it shall have to be taken from side road of Nurani (tallies with A-52) and to bring from Uday Gas to go to Patia U-turn shall have to be taken after reaching at Nurani. Thus one can reach at Gate of S.T. Workshop. This topography shows that whether the witness says that the vehicle was brought from Krisha Nagar, from Nurani or taken to Uday Gas or was at S.T. Workshop are all the possibilities which are all believable and on that day it was possible for one to be at all these places, hence the mention of any witness for the A-37 to have come from and gone to any direction are all credible.

(7.21) The cross-examination on the dressing of A-37 proves that the witness did observe the dress and its colour which was wore by A-37 on that day. As emerges from the cross, while the car of A-37 came the mob gave way, the men of the mob were around the car of A-37, she gave a lecture for 2 to 3 minutes and then she returned in her car. All these part proves the prosecution case and shows that the witness is truthful.

(7.22) According to the witness the A-37 came twice in the morning, the personal knowledge of the witness about the undue entry of the mobs in the Muslim locality gets confirmed in the cross.

(7.23) The prior acquaintance with A-26, A-37 and A-62 stands proved, no doubt is created about their identity. No substance is found in labyrinth of word 'Pati' and 'P.A." No defence or reasonable doubt is created with it. This clearly seem to be slip of pen or slip of hearing.

(7.24) The damages were suffered by the PW.

FINDING OF PW-236 :

(a) From this witness, active involvement, presence and participation of A-26, A-37 and A-62 stand proved in the charged offences beyond all reasonable doubt for the morning incident.

(b) From the facts and circumstances, probability of the accused to have hatched the conspiracy. The accused in the mob attacked Nurani, burst the gas cylinders, tanker of kerosene was pushed - it was damaged and destroyed.

(c) A-2, A-17, A-20, A-24 and A-44 have been granted benefit of doubt qua the PW.

(d) A-37 has been attributed role of delivering provoking speech and instigating the members of mob (morning). Attempt to file complaint against the A-37 in the year, 2002 was failed.

(At about 11.00 a.m., A-37 came in her car, she gave signals to the mob hence mob came closer to her, she talked with the mob where about 100 leaders in the mob were present. After Mayaben went away, the mob attacked on Nurani.)

(e) The PW has suffered damages.

(f) The PW knows A-26, A-37 and A-62 prior to the incident.

(g) A-37 came twice in the morning in the area.

(h) A-26 has offered bribe to give affidavit in his favour and upon denial, threatened the PW.

8. PW-156 :

(8.1) This witness is an injured eye-witness, who was residing at Jawan Nagar from 1972 and after the incident he had to reside at Vatva. This is a glaring illustration how the ghastly offences committed on the date attacks on the roots of the witnesses and their families which must have obviously disturbed their livelihood too. Eight family members of this PW inclusive of a wife, five children and two grand sons were done to death in the incident. Even one more daughter, Supriya also died during the treatment. Thus in all, he lost about nine of his family members in the communal riot.

(8.2) The gist of the oral evidence of the witness is as under :

" I went to offer Namaz at Nurani, then sat at tea-stall. When I was residing at Jawan Nagar, I was doing hawking for snacks, running grocery shop and was doing the work of digging grave and preparing the dead body for last rites. At 8.00 a.m. after instructing the children to remain at home on account of bandh, I went to Kuber Nagar to purchase material for my shop, at that time certain shops were found closed, I then came back at home, somebody from my neighbourhood came to inform that a big mob from Kuber Nagar had come. I came out near S.T. Workshop, found the mob of 25000 to 30000 people coming from Kuber Nagar.

The men in the mob were giving slogans and shouting 'Jay Shri Ram', they had saffron bandage on their foreheads, they were carrying snacks packets, liquor bag and water bag in their waist belt, they had weapons like sword, scythe, pipe, stick in their hands.

Another mob was coming from Krishna Nagar at about 9.00 a.m.. These two mobs were mixed up and have attacked Nurani, torched Nurani, outside Nurani a cart of one Rajesh Kerosenewala was lying which had kerosene, even another vehicle of one Vadgeri Badshah was also with kerosene, both these carts had full kerosene which both were used to torch Nurani by using the kerosene, even a gas cylinder was also burst there to torch Nurani.

At this time, two police vehicles came near S.T. Workshop, fromwhere three big black coloured boxes were taken out, one white car came and people started taking name

of 'Mayaben Kodnani'. She got down from the car. Mayaben (A-37) told that 'kill them', then the mob had attacked on us, because of this attack we all stepped back towards our Muslim chawls.

The Bakra-Eid had passed away in the near past, police point near Muslim chawl was kept. which police was requested by us to stop the mob but police told us to go away, otherwise they would beat us.

The mob attacked on us and police started firing and bursting teargas, the firing hurt Hasan Qureshi on his head, Abid on his private part who fell down there, hence we all ran towards back side of our Muslim chawls and started stepping back and back. One rickshaw driver named Khadir was injured by sword and then burnt near the chawl and more particularly near the public toilet. After this, I went back to my home.

When I reached my home, my daughter informed me that 'the mob was torching the dwelling houses, therefore let us go away', we were 10 persons at home, 8 children, myself and my wife whereas two of my daughters were at Surat. We all the ten left our house and in the noon we went to terrace of Gangotri.

I saw from this terrace that Guddu, two brothers of Guddu, Tiniyo and others were present who all had sword, stick, kerosene tins.

This mob has attacked Aiyub s/o Allabax who was burnt alive near house of Abeda at last lane of Jawan Nagar

and near S.R.P. Quarters' wall by putting him in the rickshaw which I myself saw.

In this incident, Guddu had sword in his hand, his one brother had kerosene tin and another brother had stick in his hand, there were 5 to 6 other Marathi boys wherein Tiniyo s/o. Kadam was also present.

There was too much of disturbance and uproar around, hence we came down from the terrace of Gangotri where we met Jay Bhavani and Dalpat (both dead) (Dalpat is brother-in-law of Jay Bhavani).

Jay Bhavani and Dalpat advised me that let my wife and children sit in the hall which was near the temple situated in Gangotri, I then made them to sit there where so many persons of our chawl were sitting where even about 50 women of our chawl were present, I then went to terrace of Gangotri.

Jay Bhavani then came to the terrace where I was there, Jay Bhavani told me to give our big vessels so as to see that he would prepare Kadhi and Khichadi for us (Kadhi & Khichadi is a Gujarati food generally ate in Supper but for Muslim as emerged ate after death). I told to Jay Bhavani that in our Muslims, this food is offered after death (of someone) then he told me that 'You are not going to survive now", "Mullaji, none of you would now survive", I told him that "Allah is very great", at this time it was nearly evening.

At this time, my sister-in-law Raziyabanu (PW 151) came rushing in burnt position who had her son Shoaib aged

about 20 days with her who was also burnt, on my inquiry, Raziya informed me that my mother, wife and children were also burnt near Gangotri Society in a *khancha* (corner). I immediately went there, I saw my wife was burning, my daughter Supriya was being pulled by Jay Bhavani, son of Jay Bhavani, Suresh Langado, Tiniyo and others. Seeing this, I remembered Allah and gave a loud call to Allah and spoke our religious slogan, at that time, I was attacked from my back side on my head, hence I fell down. There was bleeding from my head, I had injury, I remained unconscious for about half an hour (The witness removing his cap showed his injury to the Court).

At about 07.00 p.m. I could regain my consciousness. I saw Supriya was being pulled and my wife Lalbi, daughters Afrinbanu, Sahinbanu, Sufiyabanu and sons Mohammad Hussain and Khwaja Hussain were burning there. Being bothered for remaining children, I loudly spoke their names.

At that time, I met Mehboob, husband of Bibibanu, in burnt condition, I heard my son Yasin was calling me as Abba, I also saw Yasin in burnt condition who sat in the water tank because of burning sensation he had. I took him out to avoid any complications on his skin.

I saw Mehboob and his two children in burnt condition. I along with my son Yasin, Mehboob and his two children went on the terrace of Gangotri where some people were crying and lying down there.

At about 09.00 p.m. police came, called us down from the terrace, and brought us to Shah-E-Alam (Camp). I got treated at the Camp for my head injury and my son Yasin was initially treated there whose dressing was done as was too much burnt. He was advised to be taken to V.S. Hospital. Then at about 12.00 midnight, he had been taken to V.S. Hospital. The treatment of Yasin started at about 02.25 a.m. I spent whatever money I had to treat Yasin.

As I had learnt that my daughter Supriya was admitted in Civil Hospital, on 03/03/2002, when Smt. Sonia Gandhi came at V.S. Hospital, we were crying, she consoled us, on my request, she has also arranged to bring my daughter Supriya at V.S. Hospital from Civil Hospital through a chit so that I can attend both.

Carrying the chit of Smt. Sonia Gandhi, I went to Civil Hospital, I could find out my daughter Supriya there who told me her sordid tale and informed me that "Father, I could not preserve and protect my chastity." I informed her that "I have seen you being pulled, but then after I was also attacked, hence I could not see further as to what had then happened to you." Supriya told me that she was raped by four-five persons and Guddu Chhara, the son of Jay Bhavani (A-40) and Jay Bhavani were involved in this rape. Moreover, Manu (A-28) was also there who removed her clothes. Since the doctor was available, I could not take Supriya to V.S. Hospital, and left leaving her alone.

Upon return to V.S. Hospital, a message was conveyed to me at V.S. Hospital that my wife and daughters

were to be buried at Shahpur Graveyard and I should leave for that.

I went to Juhapura Camp and requested my sister and brother-in-law that they may go to identify dead bodies of my wife and children as my two alive children were in different hospitals. My brother-in-law identified dead bodies of my family members.

Next day, when I went to Civil Hospital I learnt that at 01.00 a.m. midnight, my daughter, Supriya died.

My brother-in-law informed me that he did identification of the dead bodies of my family and the dead body of my son Chand was missing. It is then after my this son Chand was traced from another Relief Camp at Shahibaug. The brother-in-law also informed me that the two year's old daughter was carried by my wife Lalbi and both had died due to burns in that position only.

Her dead body was sent to P.M. Room, my daughter Supriya had 80% burns, I met Dr. Satapara to take dead body of my daughter, we had been to Naroda Police Station for doing her inquest panchnama, we came back and then after her dead body was handed over to me. I buried her at Ganj Shahid Kabrastan.

The treatment of my son Yasin continued for about six months at V.S. Hospital.

I was called for T.I. Parade where I identified

Neelam Marathi to whom I saw in the mob on that day.

Guddu, Dalpat and Jay Bhavani had died whereas Mayaben, two brothers of Guddu (viz. A-1 and A-10), Tiniyo (A-30), Manu (A-28) Suresh Langado (A-22), son of Jay Bhavani (A-40) and Neelam Marathi (A-54) to whom I can identify were all present at that time on that day.

Panchnama of my house was drawn, my statements were recorded. “

(8.3) The witness identified A-37, A-10, A-22, A-28 and A-54. A-1 was exempted from appearance who had no dispute for his identity.

(8.4) A-30 and A-40 were though present in the Court have not been identified by the PW in the court.

SUBSTANCE FROM CHIEF-EXAMINATION OF PW 156 :

(8.5) The over all impression of this witness is that he was extremely disturbed and confused. He often got nervous and was charged with emotion during his testimony. He was observed as confused when he was not sure about the date of death of his daughter, Supriya. This Court firmly believes that this witness should be believed for the part of his deposition only to an extent he gets support from some other witness. Any incident comes on record with the sole testimony of this witness, should not be accepted without detailed scrutiny about the credibility of the version of the witness and without getting any corroboration from any of the reliable witnesses.

Complete reliance on this witness is not the call of wisdom.

The incident is of before 8 years, by this time, the PW has married again, out of this new wedlock he has children and it seems that he lives and leads normal life. It is therefore, not improper to conclude that he has regain the spirit of life. It is true that nobody can forget the horrifying incident witnessed by the person, hence understanding the PW, it is prudent to adopt necessary caution. Basing upon the examination-in-chief only, it appears that it is just and proper to conclude that :

(a) A-30 and A-40 have not been identified by the PW in the Court, no TIP was held for them and that only reference of their name is not sufficient to book them for crime. Benefit to the both.

(b) No incriminating evidence is led against deceased Dalpat. There is nothing to believe that the examination-in-chief reveals any crime of Dalpat through this PW. Benefit to him.

(c) No overt act is attributed to A-54 and even he has not been named in the examination-in-chief. Though he was identified in T.I.Parade, in examination-in-chief, he has not been referred by his name, but by a general salutation as 'Marathi boys'. If T.I.Parade at Exh.249 is perused, it seems that the witness involves the accused to be in the mob and to compel them to go away. After perusing the examination-in-chief, the T.I.Parade which is successful, loses its significance as no incriminating role is ascribed in the substantial evidence to A-54 as against very

negligent role and mainly was ascribed in the T.I.Parade. If the A-54 has said to go away in fact, it shows that he was not sharing common objects of the unlawful assembly.

Considering the above, A-30, A-40, A-54 and deceased Dalpat needs to be granted benefit of doubt.

The conclusion from Chief-examination is taken in light of the over all impression created in the mind of the Court about the witness and since it is felt that it would be extremely unsafe to rely upon this witness completely as far as involvement of the accused are concerned. Moreover, even in examination-in-chief itself, the above referred accused have become entitled for benefit of doubt.

(8.6) No doubt is left out in the mind of the Court about the witness to have suffered damages.

(8.7) The witness states that he has seen the attack on Nurani where two carts of kerosene and gas cylinder were used. This fact is also stated by many other witnesses hence this part of the version is believed.

(8.8) This witness has seen his wife and children burning in the evening occurrence, this is also seen by many other witnesses. No doubt is created in this point of version.

(8.9)(a) The witness testifies to have seen the noon occurrences and he noticed the presence and participation of Guddu, A-1, A-10 etc. in the noon occurrence. This is also

supported by many witnesses and that exclusively scrutinizing that part of the deposition, it seems that the witness has seen the noon occurrence.

(8.9)(b) The witness has stated about attack on Nurani and other things about the morning occurrence. He has seen A-37 in the morning occurrence provoking the members of the mob which is also seen and deposed by many of the witnesses. Moreover, upon scrutiny of this part of the evidence since is supported by many PWs, it seems that even this part of the evidence of the witness is acceptable.

It needs a note that the occurrences of morning and noon mentioned at above para-(8.9)(a) and (8.9)(b) are held to be truthful as the PW is held giving account of the occurrences as eyewitness. The reasons are such that the PW knows about police firing, names of injured in the police firing, the facts and details about attack on Nurani, use of kerosene and gas cylinder for that, the slogans given, the incident of Khadir, from the morning occurrence and details about the attack in the chawl, incident of Aiyub, all the surrounding etc. of the noon occurrence which all very much tallies with the testimonies of other reliable PWs- many of whom have also been discussed in this chapter.

(8.10) Considering the above discussion, the presence and participation of A-37 in the morning occurrence, presence and participation of Guddu, A-1 and A-10 in the noon occurrence. When he has also seen burning and death of his wife Lalbi, daughters, Shahin, Afrin, Sufiya, sons Mohammad, Khwaja Hussain, Mehboob and two children of Mehboob at the evening

occurrence, it seems that he has also seen the evening occurrence.

(8.11) The witness has testified in his examination-in-chief itself that he has seen his daughter Supriya being dragged by Bhavani, A-40, A-30 and A-22. But, he has not identified A-30 and A-40, hence they have been granted benefit of doubt. Then after because of head injury he sustained, he became unconscious. After half and hour, he regained consciousness.

Upon over all scrutiny, it appears that the witness has seen A-22 and Bhavani to have been dragging his daughter Supriya and beyond that since he lost his consciousness, he has not seen anything. The witness is also credible on this part of the evidence as no reasonable doubt is created against this part of the occurrence, hence it is held that A-22 and Bhavani were dragging his daughter Supriya at the water tank.

(8.12) The witness testifies about the oral D.D. of his daughter Supriya @ Sofiya wherein she described about gang rape on her, but this Court is not inclined to believe the oral D.D. as it is not safe to believe any part of the deposition of this witness which comes out from his sole testimony. The confusion in the mind of the PW about date of death of his daughter, upon perusing inquest panchnama EXH.2062 and when no corroboration is available to the contents of this D.D., the Court is not inclined to believe entire D.D. as the Court has doubt about its truthfulness. When the Court is doubting the truthfulness of the D.D. and when it is an admitted position that after seeing the daughter being dragged, the witness lost his consciousness, it is just and proper to hold that it is better to

grant benefit of doubt to the accused involved as far as the allegation of gang rape is concerned. This Court firmly believes that the position in which daughter Supriya was at Civil Hospital and further noting the relationship the deceased Supriya had with the witness, that of daughter and father, it is not probable that the daughter would tell about the gang rape on her in the terms the witness wants the Court to believe and that too in the hospital and lastly the P.M. Report of the deceased was of identified body which does not tally with gang rape. The fact of the gang rape on daughter Supriya does not get support from any other PW or P.M. hence the Court is not inclined to believe. Benefit to the accused of this occurrence.

(8.13) This witness has testified the mob to be of 25000 to 30000 persons which is quite exaggerative testimony as not a single witness has said about the mob to be of 25000 to 30000 hence this Court is of the opinion that it is not safe to accept the version of this witness without any support.

(8.14) The witness has identified A-28, but the said identification is without any credible evidence and proof of any overt act by A-28 in the crime, hence only circumstance can be noted against A-28 which shall be used as a base or sole factor to bring home guilt of the accused.

Upon the points discussed above, even reading cross-examination is not required.

FROM CROSS-EXAMINATION OF PW-156 :

(8.15) The witness has been confronted on topography

extensively, but there is nothing on record to believe that the witness is not of Naroda Patiya area rather his reply matches with the topography.

(8.16) To establish improbability, it has been elicited from the witness that no member of the mob tried to pour petrol or kerosene and to burn them. Further, while at the terrace, nobody from the mob came to the terrace. In the humble opinion of this Court, probability of the incident cannot be decided in this manner and basing upon such question. It has to be understood keeping in mind that the mob might not come at the terrace where many Muslims were sitting. Instead the mob would chose the group of less Muslims or even isolated Muslims to make the attack successful and effective. Hence the occurrence is not held to be improbable.

(8.17) The witness admits to have put his wife and children in the hall with shutter where prior to burning of his family there was Raziyabanu also. Out of the eight children at Ahmedabad only two sons of the witness were survived, hence he was tremendously emotionally hurt and at least for about six months, he had no interest in life. The witness states that he has informed doctor and nurse about the people being burnt at Jawan Nagar. The witness admits that uptil six months of the treatment of his son, Yasin, he has not informed anything about occurrence to any of the doctors. In the same way, he admits no complaint has been lodged, nothing has been told on police table or at any places wherever the witness has gone, he has even not informed Press, Media etc., but all these makes no difference as the PW after having lost so many of the family members, may not be in such mental framework to inform

about the occurrence to anyone. Even there may be fear in the mind of the PW as discussed at Part-2 of the Judgement, as it may be, but the fact remains that the suggestion and the cross-examination on this part is incapable to falsify the witness. It is rather proved that he was eyewitness to the occurrence.

(8.18) The witness admits that on that day, until 7.00 or 7.30 a.m. till he returned his home there was no disturbance at Nurani, he returned home from the way of S.T.Workshop where Pandit-Ni-Chali, then Hussain Nagar then Jawan Nagar comes, after half an hour the witness went to Kuber Nagar, even while the witness again passed from Nurani to reach at Kuber Nagar there was no disturbance. In the same way when he returned there was no disturbance as well.

The above facts show that the accused have assembled at Nurani as per premeditated scheme and hence they did not assemble before their time. It seems to be their collective decision and collective execution. This is a pointer to conspiracy having been hatched.

Moreover, it is not the case of anybody that at least upto 09.00 or 09.30 a.m. there were serious or notable disturbances on the road hence the cross does not focus any defence.

(8.19) The witness clarifies, which is important for topography, that today the pitfall of Jawan Nagar has filled in, but at the time of incident Jawan nagar pitfall was a land which is lower from the usual level of earth.

It is also elicited that because of the wall of Jawan Nagar, Jawan Nagar could not be seen, the witness stood near the turn of the S.T. Workshop, the witness stood beside the wall of S.T. Workshop where at present police chowky has been made functional, opposite to Nurani and facing the S.T. Workshop compound wall, there are Muslim Chawls wherein mainly Muslims are inhabiting, the witness adds that even some of the Hindus were also residing, at the place where the witness was standing the Hindus and Muslims were standing, the witness was able to see Nurani Masjid as well as the way of Kuber Nagar. This part of cross is not at all helping defence. It rather proves why the Muslim chawls were selected as the site of offence which should be with an intention to kill maximum Muslims.

(8.20) The witness has not seen any woman police, he has not seen any truck near Nurani, but merely from that it cannot be understood that the woman police was not there or the truck did not come to Nurani. It is an admitted position that there was tremendous rush of people and so many were on the road and around the witness, hence the witness may not be able to see everything all around. It is for these reasons, all details may not be answered by the PW.

(8.21) The incident focused by PW-73 and one more PW about burning alive six to seven family members in the house of PW 156 does not stand proved since according to the witnesses, it was house of PW 156, but this PW 156 denies happening of any such incident in his house. He rather proves the place of death of his family members to be at water tank.

(8.22) The witness testifies that the incident of Aiyub took place near *khada* at Jawan Nagar, according to the witness, the time of the incident of Aiyub is 04:00 p.m., the incident of Aiyub took place at third lane of Jawan Nagar.

The incident of Khadir took place near first lane of Jawan Nagar where public toilets were situated. The incident is of morning.

There is nothing to doubt the incidents but still as far as this witness is concerned, it is safe to believe the incidents only if the incidents get support from some another PW.

(8.23) Paragraph 132 brings the fact on record that the witness has seen A-37 only on that day, he had no talk with A-37. There is nothing incredible or unnatural about it.

Since A-37 is an M.L.A. and leading person of the area, her identity could never remain hidden and even if the witness has not seen her till that day, the persons standing around him must have seen her many times and that in light of the said hard reality, there is no substance in dispute of identity of A-37. What is important is not the presence alone, but proof of participation.

(8.24) This witness has lost about nine of his family members viz. a wife and other eight, hence it cannot be accepted from such a witness to speak like parrot. He has lost everything in his life on that day except two daughters who were out of station on that day and two sons who could survive,

none survived in the family. Moreover, the witness is residing in the same area for long and as has been clarified by the witness before the SIT, he was mentally disturbed and upon becoming little normal, he has given name of the accused. This is quite natural.

(8.25) The emphasis on the affidavit before the Supreme Court requires to be dealt with. It is not on record and it has not been admittedly investigated that whether this affidavit was in fact presented before Hon'ble Supreme Court or not, these are not the certified copy of the affidavit, why these affidavits were needed and who drafted it and whether is it under the instruction of the witness or not and whether in fact it was filed or not, are all the questions which need to be answered before believing it for either purpose. There is no endorsement that this affidavit is made under the instruction of the witness or not hence without reference to context, it does not sound to be proper to appreciate the oral testimony basing upon this affidavit.

(8.26) Moreover, the purpose of the affidavit is different then the purpose of statement given before the SIT and testimony before the Court, hence affidavit cannot be treated as document from which the truthfulness of the witness should be decided qua the testimony before the Court. It is in no case an earlier statement.

(8.27) All suggested omissions from the statements like universal mechanical sentence of the SIT are indeed not material and in no way are capable to create any doubt against the testimony given by the witness which testimony is

otherwise by and large truthful on the aspects supported by other PWs.

(8.28) The witness clarified that he has seen from terrace the incident and the men of the mob as he was able to see and that though he was standing on the terrace, but even if somebody would sit at the floor level of the terrace then also the men of the mob would be visible as on the terrace, there were cement net which make the visibility possible.

In the opinion of the Court, the terrace being on height, then the place where the men of the mob were standing, it is but obvious that anyone can see from terrace as the identify of the person standing on the lower height than the terrace is always naturally possible. Hence, there is no reason to disbelieve the witness on all the aspects.

(8.29) There are several suggestions in the cross-examination for which fact the witness never claims to have seen or heard, either in testimony or in the statement before SIT, hence such suggestions are creation of the cross examiner which do not have any weightage in impeaching the credit of the witness.

(8.30) In these Muslim chawls, the people residing were poor and daily wage earners, their concentration is bound to be on earning their livelihood to feed the family and hence they would not be inclined to develop relationship with all the neighbours or with all the persons of the locality, therefore it is but obvious that the witness might not be knowing the names, hence the witness if knows the names later, his testimony in

the very peculiar circumstances of this case should not be doubted as knowing only does not mean knowing only the name of the person. The truthfulness of the PW cannot be doubted on the aspects which have been held credible from his testimony and to the said extent, he is dependable.

(8.31) Deceased Supriya had sustained 80% burns injury.

FINDING OF PW-156 :

(a) A-30, A-40, A-54 and deceased Dalpat have been granted benefit of doubt qua this witness. Practically, no purpose of successful TIP of A-54 serves. Circumstance against A-28 is noted since was identified by the witness.

(b) The witness has suffered damages in the riot.

(c) The witness proves that hatching conspiracy amongst the accused is probable.

(d) The witness is an eyewitness of morning, noon and evening occurrence.

(e) He proves presence and participation of :

- A-37 in the morning occurrence.
- A-1, A-10 and Guddu in the noon occurrence.
- A-22 and Bhavani in the evening occurrence.

(f) The occurrence of Khadir rickshaw-wala of morning and occurrence of Aiyub of noon shall be believed provided that the witness is corroborated on the occurrences by some other

witness.

(g) The wife of the witness, Lalbi, his daughters Shahin, Afrin and Sufiya and his sons Mohammad, Khwaja Hussain and Mehboob and two children of Mehboob had been done to death in the evening occurrence.

Another daughter of the PW Supriya had sustained fatal injury in the evening occurrence and has succumbed to death during the treatment at Civil Hospital.

9. PW-227 :

(9.1) This witness is resident of Khemchand's Chawl which is behind Nurani. In the year 2002 the witness was serving at one fruit shop. This PW is an injured eyewitness.

(9.2) At about 9.00 or 9.15 a.m., the witness came to drink prepared tea at Milan Hotel, near Nurani Masjid where his 2 to 3 more friends were sitting to take prepared tea.

(9.3) The gist of the testimony of the witness is as under :

"There were mobs near Natraj Hotel and Krishna Nagar. The mobs were of Hindus. The men of the mob sitting in rickshaw were shouting that 'Bandiyas (loose word used for Muslims) you stop'. I was looking at Krishna Nagar. Seeing the mobs, we were afraid and returned from Gate of S.R.P. at Milan Hotel and we talked to the owner of Milan Hotel to close down the hotel.

At this time, I saw Bipin Panchal (A-44) in mob of Krishna Nagar, who was possessing sword in his hand, there was Guddu Chhara (deceased) with iron pipe and Babu Garagewala (A-33) with iron pipe in their hands. The mob of the Krishna Nagar was damaging, destroying and shattering the things into pieces and burning tyres in the midst of the road, I then went opposite Natraj. I saw Mayaben (A-37) on the road in the mob of Natraj Hotel. The men of that mob had saffron flags, and were dressed up in Khakhi Chaddi (Shorts). The men of the mob were told by Mayaben (A-37) that 'you go ahead I am with you'. I then returned to Nurani.

After returning to Nurani, I was informing Muslims that 'since the atmosphere is tense you be alert'. The Hindu mobs were pelting stones on Nurani Masjid after Mayaben (A-37) has told to the mob that they should go ahead and she was with them, Since Mayaben (A-37) told the mob the sentence reproduced, I was afraid and being alert I informed Muslims at Nurani to be very cautious.

The police sitting at Police Point at Nurani Masjid has told us that 'nothing will happen, you take Muslims at their home' hearing this from police I took away Muslims from Nurani to home. While I was escorting the Muslims at their home at this time I saw persons of Hindu community to have been stone-pelting on Nurani and they were throwing burning rags on Nurani, police bursted teargas on Muslims. Police did not help Muslims. The men of the mob were telling, 'Bandiyas now your are not going to be survived, you speak Jay Shri Ram'. At this time, there was stampede to save our lives. The men of the mob were shouting, 'Kill, Cut'.

The men of the mob was stopping the traffic and were burning cars and rickshaws and were destroying and shattering everything to pieces. I was at Nurani till then, then after crossing the road, I went towards Hussain Nagar near S.T. Workshop.

At the Hussain Nagar, there were mobs of Hindus who were killing Muslims by their weapons, were torching houses of Muslim and were throwing burning rags, there was private firing as well as police firing at Hussain Nagar where one Abidali died. On happening of this incident, there was stampede and Muslims started running here and there. At this time, I along with other Muslims went to Jawan Nagar at about 1.30 p.m.

After this, at about 4.00 or 4.30 pm, we went to S.R.P. Quarters, where we were not permitted to go inside hence, we had to sit on the roof of Jawan Nagar upto 5.30 p.m..

While we were sitting on the roof, Guddu Chhara (deceased), Babu Garagewala (A-33) and Suresh Langda (A-22) saw us, they then after came with Hindu mob which mob has pelted stones on the Muslims. We then went to Gangotri society. We requested there to help us, but none helped us. They shut the doors of their houses (in Gangotri society the inhabitants are Hindus). We then after returned to house of Umaruddin at Hussain Nagar where we have hidden ourselves in the two storeyed house where about 200 to 300 Muslims have taken shelter. Then after, at about 2 or 2.30 am at night, police came to take us but we were afraid and did not come out

as we thought that 'it must be the Hindu mob'. Ultimately confirming that it was police, we accompanied them until Shah-E-Alam Relief Camp.

I gave one application to the Police Commissioner on 03/06/2002. My statement was recorded at S.I.T.

In the incident, my house and ornaments in it were robbed and my household etc. were shattered to to pieces. I suffered damages

I was injured by stone on my right leg during the stone pelting.

I had another house at Pandit-Ni-Chali behind Nurani which house was robbed, destroyed and burnt in the incident.

I know Guddu, Babu Garagewala and Suresh Langda to whom I can identify. Guddu had passed away. I also know Bipin Panchal and Mayaben Kodnani. I can also identify them.

A-37, A-22 and A-44 have been identified by the witness.

A-33 was present, but the witness could not identify him."

CROSS-EXAMINATION OF PW-227 :

(9.4) This witness is an injured eye-witness, the witness is

only Vth standard pass, the witness states that he knows watching time from watch, he has wrist watch. The witness has two houses for which panchnamas were drawn. It is true that the damages at his house situated in Khemchand's Chawl was about 2 to 3 lakhs for which the damages received were Rs.2,500/=. The damages sustained at the house of Pandit-Ni-Chali was for Rs. 2 to 3 lakhs for which Rs.7,000/= was given as damages, he has even sustained injury, the witness admits that he has not received the damages for which he is entitled, he disputes that he requested a political leader to help him in getting sufficient damages. This cross does not help defence as there is nothing that the PW was aggrieved by the receipt of less damages. This is also not probable when no litigation, application or appeal etc. has been filed by the PW for the same.

(9.5) If the witness has not seen any mob or any activity of the miscreants where he resides, that does not mean that other witnesses who are telling about beginning of gathering of mobs at road or Nurani are speaking lie because the witness speaks about his observation and that too while he was at his home, but when he came outside he has also seen mobs and hence this part of the cross-examination does not falsify the witness.

(9.6) In para-58, it has been elicited from the witness that there was a large mob at Natraj Hotel, none of the member of the mob has identified the witness to be Muslim.

This aspect shows that A-37 must have spoken the reproduced sentence in front of this witness who was also near

the mob. It is even clarified in para 59 that the mob was in between and the witness had passed through the mob and has also returned in the same manner. This aspect probablise of witness having heard all those provoking material spoken by A-37. As has been elicited there were Hindu mobs all around.

(9.7) At para 62, it is further clarified that the witness stood close to A-37 for about 2 to 5 minutes. There is no material which doubts the position of the PW and his closeness to A-37 on that day.

(9.8) At para 68 the witness states that he has seen Guddu, A-22 and A-33 upto 6.00 p.m. on that day. Hence, right from 2002 the witness has involved A-44 and A-33 in the crime.

While giving the name in the year 2002, there is no question of any mistaken identity nor such defence has been put forth for the naming in the year 2002 hence, the possibility of the giving name of A-33 by mistake is nil for this witness as A-33 has his residence and occupation in the same locality where this witness resides for about 20 years (as per Exh. 1616), but since TIP by PW has not been held it is not prudent to perceive that the PW has not mistaken in giving name of A-33 in 2002. A-33 hence is granted benefit of doubt.

(9.9) Para 71 shows that A-44 was admittedly known to the witness before the incident.

(9.10) Para 72 shows the case of the defence that the hospital of A-37 is very close by to the locality where incident took place. This probabalises presence of A-37 at the site in

addition to the fact that she was M.L.A. of the area then

(9.11) Para 72 shows that A-37 was admittedly known to the witness before the incident took place.

(9.12) If Exh.1616 is perused which is a complaint application of the witness, it becomes clear that on 3/6/2002, the witness has clarified that the offences in the incident were committed by V.H.P. and Bajrang Dal and that he knows A-44 and A-33. (Did not identify A-33 in the Court)

(9.13) The PW involves A-37 stating that she told to mob that 'you go ahead I am with you'. This even stands supported in the Sting Operation.

(9.14) This witness seems to be very natural. Usual submission of he being tutored and got up is made by the defence, but the overall impression of this witness which has been noted during his deposition is that the witness was even not serious while giving his testimony, his flow was very natural and his act of not identifying A-33 itself is suggestive that he is not falsely involving anyone because if he was to do so he could have done it by any means. No TIP was held for A-33 through this PW hence A-33 deserves benefit since has not been identified by the PW before Court.

It seems that though the witness said that he has formal education, but it seems that when his complaint was given to him he was sure that he would not be able to read and therefore without reading he has returned. Thus, the witness is such who hardly possess formal education and that it does not

seems that he was either got up or tutored. He has given an impression to be really an eyewitness.

(9.15) The witness is truthful, reliable and through his testimony he proves the prosecution case beyond reasonable doubt against Guddu, A-37, A-44 and A-22.

FINDING OF PW-227 :

(a) The injured PW proves presence and participation of Guddu, A-37 and A-44 beyond reasonable doubt in the morning occurrence.

(b) The PW proves presence and participation of Guddu and A-22 in the noon occurrence.

(c) The witness proves that hatching conspiracy amongst the accused is probable.

(d) The hospital of A-37 is close to the site.

10. PW-52 :

(10.1) PW 52 is an injured eye-witness. Even her husband and two of her sons were also injured in the crime committed on the date, time and place of the offence. This witness resides behind Nurani Masjid for about last 30 years who at the relevant time was working in one company as Security personnel to physically examine women employee.

This witness states an undisputed fact that her

younger son was not found on that date and she was deeply concerned for her younger son, hence her presence outside her house and in the locality is very natural because her attempts to search her then unfound younger son would always be in her own locality.

(10.2) This witness further states; that on 27/02/2002, she saw two to three shops burning. This fact tallies with the deposition of PW 274, Mr.K.K.Mysorewala and even it also tallies with I-CR No.96/02.

The witness learnt through her elder son that there was a big mob of many persons having weapons in their hands like sticks, sword, pipe and scythe. She then went outside to see near Nurani Mosque, at which point of time, she was in her uniform which was the uniform like lady police. The fact of the mob possessing deadly weapon was also witnessed by the PW.

She says further that from Natraj Hotel, one white car came from the Ice Factory which halted near the Nurani Mosque. From the car, A-37 and her Assistant got down (no name of the accused but mentions one who according to her was assistant of A-37). A-37 wore white *Saari*, she then talked to the persons of the mob.

According to the witness, since she was looking and perceived as woman police her presence was not objected to when A-37 has provoked and instigated the mob by pointing Muslim locality to the mob and by telling the mob to destroy the Muslim area in the presence of the PW. It is then after the mob has started stone-pelting, scattering, damaging and

ruining the Muslim houses. The men of the mob were giving slogans like "*Jay Shri Ram*" and that 'the revenge of 'Godhra Massacre is to be taken'. The mob has increased its activities, the police had flung teargas and was firing on the Muslims. Up to this part of evidence it tallies with the testimony of many other PW.

(It is quite apparent that after the leader comes, that too M.L.A. of the area (A-37), the mob like this would be more strong, confident and active.)

(10.3) She further states that A-37 had something like pistol in her hand and she also did firing and told the mob to continue and then she left.

(In the opinion of this Court, the words 'something like pistol' is itself full of doubt, the Court cannot act upon such doubtful version. Moreover, it does not sound to be probable that the A-37 being M.L.A. would publicly hold pistol or any firearm, hence this part of the testimony does not sound to be credible one may be the misperception of the PW. As it may be, but it cannot be accepted.)

(10.4) The witness saw the gas cylinders and kerosene tins arranged and brought for which she complained to the police, but was of no avail and on the contrary, police told that "that day (date of offence) was their holiday and the Muslims shall have to die today". This has been reproduced by many PW. There may be many persons even in police who have had bias for Muslims. Use of such language is also not unbelievable, but the allegation being nameless, it is hardly of any use as none

can be impleaded for the sentence.

The witness then telephoned to telephone number 100 and then after to Naroda Police Station where according to her, PW 274 – Mr. K.K.Mysorewala had replied very carelessly like a drunkard man that "Today, you have to die, it is our holiday, there is no chance to save your lives". By this time, two gas cylinders were burst in Nurani and the disturbances created by the mob was continued and the massacre and robing of the houses started.

Upon noting the overall passive and sluggish investigation of the police in general, such attitude, response or reply by some of the personnels of police cannot be ruled out, but since there is evidence of Shri K.K.Mysorewala to have been at the site almost entire day of the offence and further it is not probable that the Senior P.I. would attend the phone call of Police Station which is not direct telephone line of his chamber, it is held to be not credible as far as the referred reply was given to the PW on phone by Shri K.K.Mysorewala. (Again there seems to be some misperception of the PW or this may be exaggerated version – hence it cannot be acted upon and in any case, it is based on guess work of the PW and not personal knowledge.)

(10.5) This witness states that she is an eye-witness of the murder of Varmaji (for whose murder a separate case was committed and has been completed), according to the PW this Varmaji was perceived to be Muslim and hence killed by the Hindu mob.

Incident of Mahavir Hall where the watchman of the Mahavir Hall, his wife and two children were done to death by the men of the mob was also witnessed by this PW.

She has also seen incident of firing by A-37 and A-44, seen Mayaben viz. A-37 coming in the car near Nurani, dropping down from the car, instructing and instigating the men of the mob who were already possessing deadly weapons and conspiring with them to kill Muslims, to damage and destroy the Muslim area and the Masjid, she is also eyewitness of incident of stone-pelting, damaging, destroying the Muslim area and the killing of Muslims there, she has seen a loaded truck with gas cylinder to have come there, the people of the mob had kerosene tins in their hands etc. She states to have learnt about bursting of two gas cylinders at Nurani.

(10.6) This witness has seen the illegal activities of the mob by being at the terrace of Yasinbhai and then she went away to the house of neighbour of Yasinbhai.

(10.7) This witness also saw her house, scooter, household, cash, ornaments being robbed by the men of the mob. She then went to a chawl behind the Masjid known as Masjid-ni Chawl (some PW know it as Juni Masjid-ni Chawl and some know it as Navi Masjid-Ni Chawl. hence shall be referred as only Masjid-ni Chawl which was one and only in the locality situated behind Nurani).

(10.8) While she was going to Jawan Nagar (situated opposite Nurani beside the S.T.Workshop wall) she saw the S.R.P. Jawans to take away money and ornaments from the

robbed houses of Muslims. She has witnessed the goats screaming and the *chharas* to take away those goats. She further saw a burnt woman, in the mob she saw Guddu (deceased accused) and A-22 in the violent mobs. She was injured in the incident. After the riot, she left for Bhivandi at Maharashtra, she has given only one statement at S.I.T. She has identified A-37 and A-44 correctly. She has identified A-38 as Assistant of A-37, she has however, not identified A-22. Exh. 427 is her application to S.I.T.

CROSS-EXAMINATION OF PW-52 AND OPINION :-

Over and above, the opinion jotted down in the bracket as above, this Court opines as under.

(a) Since this PW states in the earlier portion of her deposition that A-37 has something like pistol in her hands, the firing by A-37 cannot be believed. Moreover, A-37 being M.L.A. of the area, it does not sound to be probable that A-37 moved publicly possessing firearm that too on such a day where Media, cameraman, channels etc. are bound to be present there. Moreover, PW 149 has testified the firing to have been started after A-37 left thus this part of evidence is not safe to act upon.

(b) As far as firing by A-44 is concerned it is noteworthy that it is also stated by other PW. Noting the fact that many PW involve A-44 with similar allegation, the PW on account of corroboration to the fact, is found credible which fact is probable as well, as far as A-44 is concerned who was at the site even after A-37 left. No doubt is created against this part

by cross-examination as discussed herein below.

(c) She saw A-44 doing firing from the terrace of his garage then she went away in search of her unfound younger son Naeem. For the reason that the terrace of A-44 was situated opposite the road and the PW in search of her son went across the road, it seems possible that PW was in a position to notice the firing by A-44, but the fact is to be noted that kind of the firearm, its firing, the bullet fired from it, its remains etc. all have not been found, no evidences have not been collected by the investigating agency, but the kind of the matter it is, the oral evidence of the witnesses should only be believed all other record seems to have been polluted for one or another reason.

(d) The police witnesses state that they have done firing and many PW also states about police firing but for the said reason, firing by A-44 cannot be doubted by this Court, it is held to have been proved beyond reasonable doubt. This part of the version is also getting support from many circumstantial and oral evidence as discussed in this part of Judgement.

(e) The witness has stated about A-44 as a man doing firing from his garage. In statement before S.I.T. also she has stated that A-44 was member of the mob and was doing firing on Muslims. If these two versions are seen then the common factor is that A-44 was present and has participated in the incident of firing. This is common and consistent in the version before the Court as well as version before the SIT. The common version is found absolutely truthful. A-44 is held to have been firing on the day.

(f) The witness was crossed for having not included the name of accused in her application to S.I.T. at Exh.427, as has already been opined at Part-2 of the Judgement, this cross does not hold the field.

(g) The evidence of this witness is to be appreciated keeping in mind that she is an injured eyewitness, she has migrated Gujarat and came only to testify before the Court, has no reason to falsely involve any of the accused. She is not fluent in speaking Gujarati language and she has given her version in Hindi, moreover, as elicited during the cross-Examination she has only studied upto Std. III and that too in Urdu.

(h) The emphasis of the cross-examiner was on the probability of the PW going on the road in the circumstances mentioned by the witness.

In the humble opinion of this Court, it is quite natural that out of anxiety when the disturbances started, one would certainly go outside and in the case of this witness, her younger son was not found and hence even as a mother, her going outside seems to be very natural thus, her presence on the road seems to be very natural and most probable.

(i) It is also submitted qua this witness that she has given only one statement and that too in the S.I.T. for the first time, but as is very much clear from the record and from the deposition, the witness has left the city after the riot or say after the incident. This witness states that the position at the camp was entirely different and since such a horrifying big incident had taken place, which was witnessed by the witness

and in which they were totally ruined, it was not possible for the witness to immediately react. This conduct seems to be absolutely natural and credible one. No doubt is created.

(j) As the witness volunteers at para. 46, the witness has seen many people dying and there was tremendous impact on her mind of the incident. This is also covered at Part-2 of the Judgement. Not giving complaint is therefore, not relevant.

(k) True that the witness has admitted that she had no reason to be afraid of at the camp, but it seems that the witness is replying this with reference to the atmosphere at the camp. The fear in her mind against the accused has not been challenged.

(l) Another aspect of the cross is for non-production of the injury certificate. It is admitted position that after the brutal attack on the day of the incident the victims were taken to Relief Camps and it is matter of common experience that in such kind of calamities access to medical facilities is either too poor or if some doctor is willingly giving his services then his priority would always be to provide the medical help and he would not give the injury certificate. This point has even been dealt with at Part-2 of the Judgement.

(m) Moreover, the victims at that point of time, might not be in mental frame even to think that they may require injury certificate to prove their version, even the priority of such injured persons must also be to get cured and not to collect evidence. Thus no adverse inference can be drawn for non-production of injury certificate.

(n) Attempt has been made at para 54 and other paras to highlight omission and contradictions in the version of the witness while giving the statement at SIT, but in the humble opinion of this Court, all what can be termed to be incriminating material is on record in the Court as well as in SIT and the omission highlighted is no at all material.

For an illustration in the statement before the S.I.T., the men of the mob have brought petrol, tins and gas cylinder is main incriminating fact which is already in the statement hence other suggested parts which are incapable to give effect of material omission have not been omitted in SIT hence, even if the admitted portion is not stated during the recording of the statement at SIT, it does not adversely affect the credibility of the witness.

(o) The contents in the statement about the men of the mob to have sat on the divider and were taking Samrat Namkin is not incriminating, nor does it connect any of the accused by name. However, this activity does not seem to be improbable for the accused and more particularly in the mood the accused had on the day.

In the opinion of this Court that the mention of the pouch of the liquor should be taken as of liquid as the witness cannot say for sure that the pouch was whether of some liquid or of liquor as she was admittedly seeing from distance. The witness is not telling lie, but has misperceived this particular fact that the liquid was liquor it could be water pouch as well. As it may be, but the fact remains that this is not material omission by

using some word here or there, the witness is consistent in her version before the SIT as well as before the Court on the vital part of it.

(p) Here, it needs a note that the witness is not expected to speak verbatim same as was spoken before the SIT. In fact, if that is so, the witness would be termed as parrot like witness. It is very natural that while expressing the same incident the person may use different words and may also forget some part to reproduce also, hence by use of different words, the witness cannot be termed to be a liar.

(q) In paragraph 57, the witness has clarified that she was frightened even when she came to Court. Even if she has not so reported to the Court, it is probable that she even still may not be completely out of the impact of the terrorising incident of that day. It may take years to gather, but normally it would be reducing.

(r) The witness has also been questioned on the topography and it is found that the witness was not perfectly able to tell as to which chawl is situated where, but in light of the discussion this Court has made about the locality and about the entire situation, it seems that lack of knowledge on geographical aspect is not very uncommon, most literate persons also may not be perfect in expressing on topography or about the place situated in particular locality. Merely that since does not bring any discredit to the witness, this Court is not ready to accept that on such count, the witness becomes incredible. Moreover, this PW has also migrated from Patiya immediately after the incident hence today she may not be as clear on topography as

she was on that day.

(s) In paragraph 71, 77 etc., during the course of the cross-examination, it has been suggested and admitted by the witness that while going towards Narol, which is ahead to Bipin Auto Garage there comes a turn or a cut on the National Highway. It is submitted that this topography improbabalises the arrival of A-37. According to this Court, even if the Car comes from either direction, it can reach to Nurani. Had there not been cut on the road, which is obviously useful in taking the turn for the vehicles, the version of the witness of this direction or that direction could be material, but since there is admittedly cut on the road, the vehicle traveling in any direction of the road can certainly easily reach to Nurani.

(t) In paragraph 76, the witness clarifies that the locality, where the massacre took place, was dominated by Muslims but then it is matter of record that many Muslim families were inhabiting in the locality and this proves the reason as to why this locality was chosen by the accused as site of the offence. In fact, this probablises the prosecution story.

(u) The working hours of the witness, the uniform of the witness etc. have been questioned to create doubt, but no reasonable doubt whatsoever is created in the mind of the Court from this part of the cross-examination. There were PWs who saw a uniformed lady police (this PW in uniform) and some PWs have not seen also hence this cross does not falsifies the prosecution case.

(v) The application of the witness at Exh.427 has been

questioned by the cross-examiner, but it has to be understood that the person who does not know the regional language and/or is illiterate would always take help of some literate persons to reduce into writing their request. At such time, it is the drafter of the application in whose handwriting the applications are tendered. The application like the application at Exh.427 are the routine administrative applications, which was only to pray the SIT to take the statement of the witness and nothing beyond that. The question is that 'why the witness would give any information to the S.I.T. in such kind of formal applications when the application is only aimed to request the S.I.T. to record her statement', the answer is plain and simple that the witness would not write any of the incriminating material in such application nor the witness is expected to do so in the kind of formal applications like Exh.427. This Court therefore, does not see any substance in the submission with respect to Exh.427. This point in detail has been discussed at Part-2 of this Judgement.

(w) During the course of the cross-examination, the combat magazine has been attempted to be brought on record wherein the photograph of the witness has been identified by the witness to be her photograph. An attempt has been made to highlight the discrepancy in the interview at SIT and the version before the Court, the clarification of the witness at paragraph 88 is worthy to be noted where she says that before the reporter whatever she has remembered about the incidents was told by her, whereas before the Court she says about the sufferings undergone by her. A general question has been asked that all damages and all losses and all what was seen was informed to the reporter. By this reply, the Court cannot

come to the conclusion that the witness is speaking lie as unless the reporter of the Combat Magazine is examined and unless it is stated by him that the witness has not stated anything else or the witness has stated but he did not find it in public good, he has not printed it though the witness has stated etc.

According to this Court, any interview in the magazine can never be termed to be previous statement of the witness as it is known that the reporters have no duty to print each word spoken in the interview, but they would choose the material which would increase their circulation or which according to the reporter is more spicy item to be produced to the people at large. The printed words in the interview are not yard-sticks to decide as to the witness has done any material omission and is she credible one or not. However, most of the material in the version before the Court seems to have been told to the reporter as well, hence it is held that Exh.430, photograph of PW 52 in a page of the Combat Magazine has no worth by which the witness can be discredited. The magazine is in English language which is not in the language of the PW.

(x) At paragraph 94, the witness speaks of the shops which were being burnt on 27/02/2002, this is tallying with Exh.2084, the FIR of a Muslim complainant complaining to have burnt two shops in the vicinity of Naroda Police Station named as Paras Cotton Works and Sahara Cotton Works which is lodged as I-C.R.No.96/2002.

In the cross-examination, the witness admits that she is not sure about the timings when she came out of her house.

The suggestion has been denied by the witness that while A-37 got down from the car the stone-pelting was already on. This is in consistency with the examination-in-chief where she says that after the arrival of A-37 and after her instruction only violence was committed by the mob.

(y) An attempt has been made to confuse the witness by very exhaustive and tiring cross-examination, but it seems that the witness has faced it and has not created any reasonable doubt which can go in favour of the defence.

(z) Paragraph 106 reconfirms that the doing away of the watchman of Mahavir Hall and his family was after the arrival of A-37. Paragraph 111 is to the effect that the witness had no previous contact with A-37 and A-44, but this aspect in fact helped the prosecution and this rules out any animosity in the mind of the witness against the accused. It is known that A-37 was Returned M.L.A. of the Constituency where the incident took place hence there is no possibility of any mistake in her identity. In the same way, it is admitted position that A-44 had his shop in the name and style of Bipin Auto Centre which is admittedly situated in slanting position of Nurani which was on the opposite side. A-44 is also very much known in the area, does political activities, hence there is no possibility of his mistaken identity. The PW has also narrated his business place in the chief which proves prior acquaintance with A-44 of the PW.

(aa) It is important here to note that the witness knows A-22 who was also some time coming to her house and still the witness did not identify A-22 who was very much present in the

Court. On this aspect, this Court opines that either the witness has obliged A-22 or there was some circumstance which prevented her from identifying A-22.

As it may be, but the witness has not identified A-22, however, it needs a note that she did name A-22 as one of the person in a large crowd of miscreants. No TIP was held hence the possibility of mistaken reference of the name of A-22 cannot be ruled out. A-22 needs grant of benefit qua this PW.

(ab) It is true that according to prosecution case, A-62 has been impleaded as accused with an identity of Assistant of A-37 but the PW has identified A-38 as Assistant of A-37. Merely, this is not a point on which the witness can be labelled as unbelievable one when the PW explains as to how she knows A-38 alongwith the reason for the same.

If paragraph 112 is seen, it is clarifying the relationship of A-38 and A-37. Presence of A-38 at the Hospital being run by A-37 speaks of intimacy between them. It is true that identity of A-38 cannot be connected with the word 'Assistant' but then word 'Assistant' should not be given undue importance, what is important is who got down from the car of A-37 and according to the witness, A-38 got down from the car of A-37. The fact that A-38 was accompanying A-37 does not sound to be improbable as he has been shown as her canvasser in election. Moreover, the voluntary statement of the witness that she saw A-38 with A-37 has not been disputed at all.

This Court therefore, believes that this witness proves the presence of A-38 with A-37 at the site of the offence, in

addition to relationship between A-37 and A-38 beyond reasonable doubt. It is therefore, held that though A-38 was wrongly referred as Assistant of A-37 as has been noted by the Court below the Chief-examination, but it is in the cross-examination, complete justification pointing correct and genuine identity of A-38 by the PW was brought on record. However, here it cannot be forgotten that there was no TIP and A-38 is not on record as P.A. of A-37, hence from this identity alone, the guilt of A-38 cannot be held to have been proved, but this testimony is a strong circumstance against A-38 pointing out his involvement and presence in crime.

(ac) Para-115 reconfirms that the witness is not sure about the timings of the time of incident and that, she clarifies that the constant fear was there in their mind and that after she came out the car came within half an hour. (Referring A-37 and A-38).

Now if the examination-in-chief is seen, then it is clear that when she came out it was after 9 a.m. (para 9). If this is taken as rough time then, it may be 9.30 or 10 a.m., but it is certain that it was morning time. If para 9 and para 115 are read together, then it is clear that the witness is talking about arrival of car of A-37 at about 9.30 or say 10 a.m. This completely tallies with the prosecution case put up by many PWs.

(ad) In para.122 and 140, the witness talks of too much of tense situation in Jawan Nagar and Hussain Nagar which is Muslim locality. The violent mob was active there. She has also stated that the mobs were all around on that day and stone

pelting on Nurani and on Muslim people was on going.

(ae) In para-126, a suggestion is admitted by the witness that in different chawls, there is majority of Muslim inhabitants. This in fact supports the prosecution case of attack of Hindus on the Muslims.

(af) A very important aspect has been stated by the witness in para 128 wherein she states that her husband and son were not willing to come to Gandhinagar at SIT as both of them were saying that, 'nothing is going to happen, you go alone when we don't have money even to eat how can we spent to go there'. This shows avoidance attitude of some of the PW.

(ag) If para.148 is seen it is clear that the witness did inform the police at Nurani about the two gas cylinders and that, the said cylinders were put inside by the men of the mob.

(ah) Para.149 clarifies that the witness knows A-44 prior to the incident for many years hence, the question of doubtful identity in absence of TI Parade does not arise.

(ai) At para.150 the witness admits that the fact that A-44 was firing from terrace has not been told by her before to the SIT. As discussed hereinabove the witness has stated about A-44 to have been member of the mob and A-44 was firing on the Muslims which was seen by the witness. She is consistent on this. Even if the words ‘Firing from terrace’ is kept out of consideration than also firing by A-44 on Muslims remain hence no material contradiction or omission is noticed.

The fact of private firing get corroboration from many quarters and in the facts and circumstances of this Court, this Court is inclined to believe that in the morning, private firing was done and even the police firing was also done. There is no reason to disbelieve the PW on the aspect of private firing done by A-44. The PW does not have any enmity with A-44 nor it is improbable.

(aj) Para.152 clarifies that there was too much destruction and damage at Nurani Mosque on the date of incident, but no loss whatsoever has caused to any of the surrounding Hindu Temples.

The above contention that the case of the defence of free fight or fight against fight or attack against attack falls on ground. There is even no complaint registered of damage to a single Hindu house, ransacking or rioting any Hindu house as house of Hindu.

The attack was clearly on person and property of Muslims.

(ak) The conduct of the A-62 has been noted by the Court while the witness went to identify the accused. A-62 was on his guard. A-62 was not identified in the Court and even not been named. Even though para-112 has reply for identifying A-38 and it is shown as genuine identity for the PW, but since name of A-38 was not given in the SIT statement which tallies with the identity described by the prosecution for A-38, this identity in the Court in the substantial evidence cannot become sole base for bringing home the guilt of A-38. It is just and proper to

keep this evidence of identity of A-38 as a strong circumstance against A-38.

(al) The defence has brought on record Exh.431, a payment voucher of Confisec Printers. This has signature of the witness as has been admitted by her but this signature which has only been exhibited does not prove anything like exhibiting a photograph of Combat Magazine.

(am) The testimony of this PW continued for three days and still nothing has been elicited which creates doubt against the prosecution case, her presence is very natural at the site, she described the incident which sounds to be probable one, she is injured eyewitness, even her family members were injured, there is no reason to doubt her version about the incident. Her tendency can never be to falsely implicate the accused and to leave the real culprits. The witness sounds to be truthful and credible except that her certain part of version which may be her misconception or exaggeration.

(an) The part of her deposition where she talks about firing by the A-44 which needs to be believed since there is nothing on record to believe that only police firing was effected at the site on the date then why not to believe the oral reliable evidence.

From the facts and circumstances of the case and as discussed at Part-2 of the Judgement, the private firing is held to be absolutely probable hence, the Court believes the private firing to have been done as the fact stands corroborated from different parts of the prosecution case even death by the firing has also been stand proved. The version of this witness does

not create any doubt about the presence and participation of A-37 and A-44 at the site of the offence.

It is true that the PW might not have crossed the road, firing was done from the garage etc. seems to have been omitted from the statement of SIT, but these are not material omission at all. Nothing from the cross-examination creates any doubt against the version of the PW.

(ao) In fear to be disbelieved the witness at times exaggerate, but that is not sufficient to discredit other separable and reliable version given by the eyewitness of the occurrence.

It is possible for A-44 to do firing hence that part of the version seems to be believable one which stands corroborated by oral evidences of many witnesses as private firing was also done in the morning incident.

Suffice it to say here that the grain in this part of the testimony is that A-37 and A-44 were present since there presence also get corroboration from different PWs. This witness proves coming of A-37 along with someone, talking to the mob, directing and instructing the mob etc. as discussed.

(ap) The defence has tried to emphasize that since Karimbhai has not been examined the fact of making telephone from his telephone cannot be believed, the admission of PW of having no reason to fear at the camp, having not told the incidents to the leaders, the fact of complaint having been not given by the witness, her ignorance about the Bipin Garage had roof top or the floor, the fact of having not told the fact anyone prior to the

SIT etc. improbablise the version given by the witness, but the fact that the witness has not stated the fact stated before the SIT to anyone else falsifies by the attempt of the defence in bringing the Combat Magazine along with the interview and photograph of the PW on record. This supports the prosecution case that the version of the PW is not falsehood.

(aq) It can safely be inferred that A-37 being VIP of the area and the then current M.L.A., in the facts and circumstances of the case, either the witness may not dare to spell the name and role of A-37 in the offence and/or police would not have dared to record such statement of the PW.

(ar) The defence has further submitted in its written submission that the witness was on the road at about 7.15 a.m., but as has been discussed it was somewhere 9.30 onwards.

(as) The ignorance of the witness about the colour of the blouse of A-37, there were large assembling on the road it was not possible to hear what was stated by A-37, her ignorance about the total passenger in the car are the points which do not help the defence in discrediting the witness as the incidents happened in a quick succession and the witness might not have observed the things so minutely, but that does not mean that the witness is a liar.

(at) The witness is submitted to be treated unreliable since she does not know the fact of a death of a Hindu person, the alleged fact of PW 200 to have taken truck from near Nurani in which about 2 to 3 Hindus were injured etc.

In the opinion of this Court, even the defence has suggested to numerous witnesses that the crowd was extremely large hence in this situation, it is very much possible that the witness could notice and observe some of the incidents around her and the other incidents she might not have been able to notice.

The defence is right when it says that the persons cut to the pieces is not a part of the prosecution case. Moreover no corroboration is available to this occurrence hence, the said incident of the watchman of the Mahavir Hall and his family is not relevant to prove the charge Exh.65. This part of the testimony therefore need not be opined accordingly.

(au) Even if it is believed that the witness was unable to over hear the instructions given by the A-37 to the mob, in the facts and circumstances of the case where before A-37 arrives countless Hindus belonging to different Hindu organizations with the dress code revealing the peculiar identity, shouting the slogans like *Jay Shri Ram* and other slogans, wearing the saffron headbands, the saffron muffler etc. were present is clearly suggesting that the Hindu mob was fully prepared.

The intention and the mood of the mob can safely be inferred to take revenge of Godhra massacre, the possession and carrying of deadly weapons like sword, stick, pipe, scythe, trident, *gupti* etc. is clearly proving the intentions and preparation of the mob to do violence.

(av) If A-37 would give any instruction, any direction, or any guideline to remain peaceful or not to do illegal acts or refrain

from beating, killing, cutting or burnings of Muslims as suggested by the defence to PW 104 then the tempo of the mob can apparently be inferred to be such wherein they would first of all attack such adviser even if such adviser was none other than the then present M.L.A. of the constituency, hence the talk of A-37 with the mob was bound to be provoking, instigating and of the mood the mob had.

(aw) It is needless to say that Hindus being in majority they must have certainly dominated and over powered the Muslims. It is therefore just, proper, correct and suiting with the facts and circumstances of the case that A-37 has instigated and provoked the Hindus to do illegal act and that it can also be inferred from the conduct of the members of the mob, with whom A-37 had talked, which mob after her arrival had committed tremendous violent acts including taking lives of Muslims by burning them alive.

(ax) A-37 was the then current M.L.A., hence it can be inferred that she must have ambition to go ahead in the politics and she cannot leave the temptation of taking political mileage by being kingpin in the series of events that took place on that day.

(ay) The submission of the defence that since the statement of this witness has been taken after about six years and that since she has not given any complaint she is not worthy to be believed cannot be accepted.

In the opinion of this Court, her testimony can not be disregarded as desired by the defence as after the incident she has left Gujarat and she has not returned to Gujarat which

conduct shows she has no enmity with the accused. She came only when the SIT was constituted and even then also her husband and sons were not hopeful .

Here, it is noteworthy that since A-22 has not been identified, and no TIP was held, A-22 needs grant of benefit qua this PW.

(az) This PW is overall found truthful and believable one barring some exaggerations. This PW gets support from the other PW like 149, 136, 104, 176, 192 198 etc. in proving prosecution case.

FINDING OF PW-52 :

(a) The arrival and active participation of A-37 added to the objects and intentions of the mob, which has added tremendous confidence in the mob. She proves attack damage and destruction on Nurani in the morning occurrence.

(b) A-22 is granted benefit of doubt qua this PW.

(c) Through this witness, burning of two shops of Muslims at about 06:00 p.m. of 27/02/2002 also stands proved as is mentioned in Exh.2084.

(d) A-37 came, talked with the mob and then the mob became violent. This proves provocation, instigation and or abetment by A-37 to the mob. The disturbances started after arrival of A-37.

(e) It is held that A-44 possessed firearm and the private firing has also been proved. She saw the morning mob with weapons, kerosene tins, gas cylinders, etc.

(f) The incident of watchman of Mahavir Hall, his wife and children is not part of charge. No corroboration is available to this part hence, not considered.

(g) The presence and participation of Guddu, A-37 and A-44 at the time of the morning incident stands proved beyond reasonable doubt.

(h) The witness proves that hatching conspiracy amongst the accused is probable.

(i) The PW has suffered damages, PW is injured eyewitness, her husband and son were also injured.

(j) The PW has brought on record a strong circumstance of involvement of A-38 in the crime.

11. PW-143 :

(11.1) The PW is an injured eyewitness who is resident of Patiya for about 35 to 36 years and is doing business of plastic scrap. This witness states that the call of bandh was given by Bajrang Dal and Vishwa Hindu Parishad. At about 09:00 a.m., while he was changing the tyre of his Isar Car with the help of his two sons, he was in the pitfall *(khaada)* of Jawan Nagar.

At about 11:30 or 11:45 a.m., Muslims were

screaming "We have been killed" and were coming which the witness saw from the wall of Jawan Nagar. The Muslims were coming from Hussain Nagar to Jawan Nagar, he saw fumes and fire in Hussain Nagar (Jawan Nagar is situated after Hussain Nagar). The witness saw Mysorewala coming from side of Uday Gas in his Jeep who stopped at Panchvati Estate where four to five Muslim men got down.

After about 10 minutes, a white coloured Maruti came and stopped near the Jeep. A-37 got down from the car who wore white *Saari* with saffron belt on her forehead. Behind the Maruti Car, a large crowd came and distributed swords when A-44 saw the witness he threatened him and told him to run away, the witness ran away and went inside the house of one Maratha. The mob tried to start car of this witness, but since were unable the car was pushed and was used to break of the wall of Jawan Nagar where the car of the PW was burnt which the PW saw. (after *Khada* of Jawan Nagar there was wall of Jawan Nagar). This wall partitioned Jawan Nagar and the Khada which wall was broke open by the mob by use of Eicher car of the PW which was then burnt there. Since the wall was broken the Jawan Nagar had one more access which was opening in the pitfall towards the Highway and the another entry point was from the Jawan Nagar. Because of this, the Jawan Nagar was exposed to the Highway as well. The attack by this way was more easy.

The witness saw all the activities of the mob, who then came out from the house of Marathi and while passing through the S.R.P. Coat he went to his house where the gas cylinders were being burst, the houses of Muslims were burnt

at about 02:00 p.m. He then went to S.R.P. Wall where one Mr. Dantaniya did not allow him to go inside. At about 05:30 to 06:00 p.m., a mob came from the farms as well as from Gangotri. In the mob they saw Guddu, A-2 and A-55, who all had swords, the men of the mob had trident, stick, scythe, pipe etc. He then went to terrace of Ghoriben at Jawan Nagar. The witness was injured.

Aiyub jumped from the terrace out of fear, who had sustained fracture in his both legs. This Aiyub was lifted by Dataniya, A-44, A-2 and Guddu, who was placed inside the nearby rickshaw and by pouring kerosene in the rickshaw from the tin of Tiniya (A-55), Aiyub was burnt at about 06:15 or 06:30 p.m. Then the witness went to terrace where he remained upto midnight and then was taken to camp, his household and other movables were damaged and destroyed, the witness has identified A-44, A-37, A-2 and A-55, the witness states that he was threatened by A-2.

CROSS-EXAMINATION OF PW-143 :

(11.2) The witness has replied in the cross that prior to the statement of S.I.T. he was threatened by A-2 twice to strike out name of A-2 and A-37 from his statement, the witness states that he did not complain for this act of A-2 as his complaints were not taken. This is quite probable and A-2 can safely be inferred to have threatened as it is natural reaction and most probable as well.

At paragraph 62, the witness states while he was threatened (by A-2) he met Advocate Govindbhai who was

lawyer of the trial court who has consoled that 'nothing will happen'.

This part of the cross examination in fact supports the fact of A-2 having threatened the witness as it sounds quite natural.

(11.3) The witness is absolutely illiterate, he states that Imambibi, Badarsing, Pandit, Dilip etc. chawls are on the road, the explanation by the witness for not claiming any damages from Insurance Company with reference to damage to his car and the hurdle in registering the car on his name are very credible explanation and the said supports the examination-in-chief given by the witness.

(11.4) The witness has stated that he would be producing the FIR filed by him and that he did file Exh.982 which is the First C.R.No.100/02 where he has tagged the panchnama done for his DCM Toyota car having RTO No.GRN-5067, the Toyota car has been shown to have been burnt, the engine, six tyres have been noticed to have been burnt and the damage has been assessed to be Rs.90,000/- This Toyota was found lying near Jawan Nagar in the open space and that as is stated in the cross examination at paragraph 36, his son Anwar seems to be the person on whose name Banakhat or some writing of the car was done.

This panchnama is dated 17/07/2002. Perusing Exh.982 and more particularly the panchnama attached and the reading it with the part of the examination-in-chief of the witness, it seems that the DCM Toyota car was burnt lying in Jawan Nagar

on one of its side the Jawan Nagar wall is situated which all has been described by the PW but the PW narrates his car to be Eicher instead of DCM Toyota except that the evidence is believable and the document sought for in the cross was also tendered which shows truthfulness of the PW, which in fact supports the prosecution case of use of car to break the wall of Jawan Nagar that noon. The PW being illiterate when he mistakes in stating the brand of the car, his deposition is found natural on this aspect.

(11.5) At paragraph 44, the information elicited that there are about 600 to 700 dwelling houses of the Muslim community spread in Hussain Nagar, Jawan Nagar and other chawls is all very important information.

In the opinion of this Court, it is for this reason this locality was assaulted, attacked, damaged and destroyed as the objects of the unlawful assembly and the objects and intention of the leaders accused who hatched criminal conspiracy were clearly to do away maximum Muslims to death and to damage their property and to held up living of the Muslims.

(11.6) In paragraph 59, the witness states that he knows A-55, named Tinia, for about 5 to 7 years before the incident, this part of the cross examination shows that not holding the TI parade cannot come in the way of the prosecution. There is prior acquaintance.

(11.7) Paragraph 68 shows that the witness has no enmity with A-55, on the contrary this para shows that there is no reason for the false involvement of A-55, hence the involvement

of A-55 by this witness does not seems to be a coloured involvement.

(11.8) The PW has rightly identified A-2, A-37, A-44 and A-55 as he knows all the accused even before the incident.

(11.9) At paragraph 87, the witness admits that he has not stated any incident of the terrace before the S.I.T. Officers. This is indeed not material.

(11.10) At paragraph 88, it is clear that at about 2.00 p.m. when he went at his home he saw Aiyub and by carrying him 2 to 3 persons have brought him near the house of Guddu where Muslims were sitting.

(11.11) The witness and Guddu were residing in the same street. This shows prior acquaintance of the PW with Guddu.

Perusing the para-97, it seems that the stone pelting by the mob and the bursting of teargas by the police was ongoing when the witness was at Jawan Nagar Gali No.4 at about 6.30.

As per paragraph 95, when the witness was standing near the wall of S.R.P., there was no mob near his house and one mob came near the side of the S.R.P. wall and another mob came from Uday Gas through the farm. This also supports the prosecution case of noon occurrence which also seems to have been witnessed by the PW.

(11.12) Exh.976 is admitted to be affidavit of the witness

filed before Hon'ble the High Court of Gujarat to oppose bail application of A-37. It seems that the translation of the statement of the witness was prepared and that forms part of the affidavit. Certain contentions have been chosen from the said to falsify the witness or to point out that false affidavit was filed but upon perusal of the affidavit and the testimony no much inconsistencies have been highlighted. It is an admitted position that the witness is an illiterate man and he himself might not have translated his statement. Some sentence here or there if not found to have been properly translated, it does not mean that the witness is lying. In fact, on the vital facts which can be termed to be incriminating fact, the witness is consistent and that is the only way to appreciate the affidavit and testimony. What the witness has stated in the affidavit and in the testimony, that A-37 was present at the scene and that she has instigated the mob which had attacked Muslim dwelling houses at Patiya and killed many innocent persons remained consistent. This goes with having hatched conspiracy by the accused.

(11.13) In the affidavit, it is stated that the mobile number 9825006729 was used by A-37 on that day and the phone call details shows her presence at the site. That she being minister is a powerful and influential person and the witness opposes her bail.

The witness has not change his version about the presence of A-37 during his testimony and therefore no inconsistency is noticed between the affidavit and the testimony. The witness even states at para-117 that the affidavit was made by him for the limited purpose of canceling

the bail of A-37.

(11.14) In the statement of the S.I.T., there is mention that the witness has stated the time of the incident of Aiyub to be between 5 to 6, but now the witness denies to have so dictated.

This Court is of the firm opinion that upon overall appreciation of the facts and circumstances of the case and the totality of the case it seems that the investigation done by the S.I.T. is not faulty barring certain apparent insufficiency. This is reasonably good investigation except that in every statement of every witness a common phrase has been inserted, perhaps in the anxiety to save the skin of the previous investigating agency and or perhaps to add such formal sentences must either be the habit of the I.O or his writer as the case may be but this sentence must not surely be stated by every witness that too by use of uniform words. Secondly, at certain juncture the S.I.T. has stopped itself from further investigation for an illustration, the S.I.T. has procure the document that the mobile number mentioned in the call details said to be that of Mayaben Kodnani viz. A-37 which is on the name of Bhartiya Janta Party but it is surprising that no investigation has been made then after to conclude that it was used by A-37 or not. While opining about the investigation of the S.I.T., it can not go out of the mind that the S.I.T. has started further investigation after six years of the incident hence it must have faced many limitations and the principal limitation is passage of six to seven years from the date of incident and very poor possibility of procuring linking evidences as at some of the offices the record may not be available after six to seven years.

(11.15) At this juncture, this Court only opines that the investigation of the S.I.T. except the points mentioned above is satisfactory and almost no witness has complained about recording of self styled statement by the S.I.T. Even the videography is not denied by the witnesses. Considering all the said it can't be believed that even though the witness has not stated something the S.I.T. would have noted down hence this Court believes that this witness is in habit of saying something and then suddenly disowning the same hence as discussed above his evidence needs close scrutiny.

(11.16) As his habit is, the witness has also disowned some contentions even in his application at Exh.981, but it is immaterial as to what was written in the application to SIT Exh.981 wherein the witness was a co-applicant. Moreover the said application was tendered to S.I.T. under the signature of both the applicants with a request to further investigate the case. The PW may not remember all the details of the application but instead of saying so this PW as his habit is, gives blame to another and bluntly says to have not so stated. Hence his disowning should be viewed keeping in mind his habit.

(11.17) There are many more things that has been owned and disowned by the witness. What remains consistent is most of the part of chief examination of witness and the involvement of the A-37, A-2, A-44, A-55 and Guddu in the commission of offences on that day.

(11.18) Even if as admitted by the PW, this application at Exh.981 and his affidavit before Hon'ble High Court of Gujarat

at Exh.976 are considered to cancel the bail of the A-37 or to see to it that the relief of bail is not granted to A-37, then also this aspect does not show any animosity of the witness with A-37 as no specific incident is shown for the animosity.

This admission rather goes with the fact that A-37 was very much present on the date of the incident, she did play the role of instigating the members of the mob and still she was not treated as accused by the previous investigating agency to which the PW has objected in this way.

(11.19) The PW has every right to take recourse available to him under the law to bring the truth on book, this Court is not ready to accept that just because the witness admits this his animosity with A-37 is proved. As a matter of fact, in view of the totality of the fact and circumstances of the case, the PW and A-37 are two absolute unequals, A-37 was the then current M.L.A. whereas the PW is indeed a common man residing in a small dwelling house which has been destroyed and damaged in the riot. Not only that, but even his car was also burnt, hence the conduct of the witness does not prove false involvement of A-37 which is rather a strong pointer to the fact that the PW has noticed presence and participation of A-37 on the date of the incident.

(11.20) This Court is not concerned about the reference of privileged communication between the PW and his named lawyers, hence the same need no discussion. Suffice it to say that as has already been held the PW seems to have habit of disowning his own statement very often, but that does not mean that his entire version is to be doubted.

(11.21) It is important to take a note that in paragraph 153 this witness specifically states that he did allegation against Mr. Mysorewala and Mr. Dataniya.

There is lot of cross-examination from the contents of the joint application made by the witness along with the co-applicant which requires no discussion as the point has already been discussed. As is clarified by the witness, the pitfall (*khada*) of Jawan Nagar and the farm of the Jawan Nagar are one and the same.

(11.22) The deposition of the witness went on for three and half days which must be obviously tiresome and lengthy for the witness who also was unwell in between. The entire deposition has to be appreciated even keeping this aspect in mind.

(11.23) As is clear from the testimony and from the statements recorded in the year 2002 also the name of Guddu Chhara and A-44 have been stated by the PW. In the statement before the S.I.T., the witness has stated about A-55 alongwith the sword hence his testimony qua A-55 is tallying with his statement at S.I.T. The name, presence and participation of A-44 is consistently shown right from the statement of this witness in the year 2002. Hence, his presence, participation is not doubted.

(11.24) The witness has not been falsified even after extensive cross-examination for his version of the wall of the Jawan Nagar having been broken in front of him by use of his car by the mob on that day. This part of oral evidence has

remained in tact which proves the noon occurrence.

(11.25) It is suggested and admitted by the witness as is recorded in paragraph 199 that A-2, Murli was known to the witness even before the incident. It is further becoming clear that A-2 was known to the witness even before 1996. This shows prior acquaintance coupled with the fact that the PW resides in the locality for 35 to 36 years and A02, A-44, A-55 and even A-37 have their dwelling houses or business place in this locality, hence it is also safe to infer that there is prior acquaintance of the PW with the named accused.

(11.26) The common question has been put up by the cross-examiner as to who was the author of different applications given to S.I.T. etc. In some of the testimony, it has been revealed that Nazir Master was writing for people, some literate boys who were residing in rental houses were writing and this witness has said that his friend, Razzaq has written the application who resides at Chotila. This question on the aspect does not question the fact of having given the application hence, this question does not take defence even a step ahead.

(11.27) The witness admits that his house was not burnt, but it was robbed and he suffered damages. The panchnama of the house of the witness was drawn which is on record at Exh. 1055. It is not even the case of the PW that his house was burnt.

(11.28) As has been recorded at paragraph 217, the witness has stated before the S.I.T. that though he has given names of

the accused while the earlier statements were being recorded, the same have not been jotted down.

This shows the kind of dissatisfying investigation carried out on the earlier occasion.

(11.29) On the topography, the witness states that beside the Panchvati pitfall (which is in fact part of the Jawan Nagar pitfall) S.R.P. Quarters are situated and this S.R.P. Quarters' wall extends upto Jawan Nagar. This S.R.P. Quarters' wall has height of about 6 to 7 feet, the way to go to Jawan Nagar is falling between S.T. Workshop and Hussain Nagar, after Jawan Nagar, there is Gangotri and then after Gopinath Society and then after there was big ground for going from Hussain Nagar to Jawan Nagar. In the Jawan Nagar, there were about eight shops with shutter and then after Gangotri Society starts. To go to S.R.P. Quarters, one has to go through highway towards Krishna Nagar.

(11.30) As has been noted by the Court, what has been stated by the witness at paragraph 23 in the testimony has also been stated before the S.I.T., there is no reason to disbelieve the witness on this count. As is clear in paragraph 237 those who reside in Jawan Nagar if are desirous to go to the pitfall, they can do so by jumping the coat. The witness has clarified at paragraph 236 that they have made stair-case inside their portion so that by climbing up on those stair-case they can see what is happening on other side of the wall.

Here, it needs a note that this would mean that unless the coat viz. the wall which was a partitioning wall in

between *khada* and Jawan Nagar was broken, the mob approaching from highway could not have attacked at Jawan Nagar and that it is this wall which was broken by use of the car of the PW which has made assault to Jawan Nagar easy.

(11.31) In paragraph 240, the witness again reconfirms that as such there was no mob in the pitfall until A-37 came there. It is only after arrival of A-37, the mob came there. This is reconfirming the role and leadership of A-37 on the day. It is reiterated that the witness saw the Maruti car which came to pitfall before which the jeep of Mr. Mysorewala came and then after the mob came. It is suggested by the defence and admitted by the witness that the maruti was kept near or beside Jeep of Mr.Mysorewala. The maruti came later. The witness has clarified that in this pitfall, there was regular to and fro flow of the vehicle to carry the wood and there was factory in this Panchvati pitfall.

(11.32) In paragraph 247, the witness has stated that he has seen the incident of Aiyub at about 06:15 p.m. or so, he learnt the fact of Aiyub to have fallen down from the terrace on that very day, he does not know who carried Aiyub, he repeats that Aiyub was unable to walk and was brought near the house of Guddu. Guddu has six to seven houses at Jawan Nagar.

OBSERVATION OF THE COURT.

(11.33) The witness seems to be very much annoyed on one Mr. Dataniya and Mr. Parikh, who both seems to be from S.R.P., it seems that since the witness was not allowed to enter into S.R.P. Compound by both of them, the witness and like this

witness, many victims have as seems misperceived that the act of Mr. Dataniya and Mr. Parikh from S.R.P. were part of the conspiracy hatched by many of the accused, but in the opinion of this Court, not allowing the outsider in the S.R.P. premises, where they were posted for the purpose, was performance of their duty and it does not seem to be due to any bias against the witness or any victim. It seems that they were performing their own duty, may be with more enthusiasm and with less sensitivity but for this, it cannot be termed to be part of conspiracy.

This Court has reason to so opine as according to the PW the involvement of Shri Dataniya in the crime is not stated by any other PW. The allegation is that Shri Dataniya had lifted the injured Aiyub and put him inside the rickshaw and then burnt him. This seems to be an attempt of the witness to settle his account with Shri Dataniya who did not allow the PW to get inside the S.R.P. Quarters. This does not sound to be truth. The witness very specifically states that Shri Dataniya did not allow him to get inside the S.R.P. Quarters (at paragraph 9). There is no other supporting evidence that S.R.P. Commando Shri Dataniya told to the witness that "They shall have to die on the day". According to witness, there were about 400 to 500 persons near the S.R.P. Coat. If Shri Dataniya and Shri Parikh would not stop the people from entering into S.R.P., the security of S.R.P. premises and the residents of the quarters etc. may be in danger and that they were right in performing their duty, hence it seems that this witness has a band of mind to slightly exaggerate the things and that denial of Shri Dataniya has been projected by the PW differently, may be the PW might have misperceived the sense of duty. The entire

evidence of this witness should be appreciated picking up the grains only and keeping in mind the habit of the witness to slightly exaggerate the things and disown his own statement easily.

(11.34) In the same way, the fact that the witness saw the swords being distributed from the white coloured car has to be dealt. It is true that in the examination-in-chief itself, the witness has not alleged against any accused as to who opened the car and who distributed the swords, but the fact remains that when the M.L.A. of the area is coming out from this car, she would not keep swords in the car and that too numbers of swords which then somebody would be publicly distributing.

It is probable that there may be distribution of some material or some other non-incriminating thing, but it cannot be believed that from the car in which M.L.A. is traveling, there may be stock of the swords being carried and then being distributed publicly.

In the opinion of this Court, this witness needs careful scrutiny because of his habit of exaggerating or imagining the things at times. Upon strict scrutiny, what can be believed for sure for A-37 is, she did instigate others to commit crimes or to enter into criminal conspiracy with the co-accused to commit offences. All these activities can be done secretly and without exposing herself publicly, which in fact she did, as it also stands proved by other PW.

This Court is further of the opinion that as far as Shri Dataniya from S.R.P. is concerned, there is no credible

evidence against Shri Datania. It does not sound safe to believe this witness for the presence and participation of Shri Dataniya for his bias and annoyance against Shri Dataniya, hence the evidence of this witness is not sufficient to implead Shri Dataniya as accused which prayer has been made vide a separate application by the victims.

This witness states about the presence of Mr. Mysorewala and in his presence swords were distributed but this Court is not ready to believe publicly distribution of swords that too stock was taken out from the car of A-37. This part of the testimony is not found safe to act upon.

Exh.1055 – panchnama, Exh.976 – Affidavit before Hon'ble the High Court of Gujarat corroborates the finding.

Talking of Shri Mysorewala on that day with the current M.L.A. of the area viz. A-37, also seems very natural, he being Senior PI of the police station, it is but natural that if the M.L.A. of the area would come at the spot, he would be talking to her but then it is not crime.

By and large the PW is truthful, but as seems is in habit of exaggerating and disowning his own version or statement. For this habit, his versions are appreciated accordingly. However, this habit is not found to be sound reason to disregard his most reliable part of his testimony.

FINDING OF PW-143 :

(a) As far as incident of Aiyub is concerned, it is not safe to

rely upon this witness alone unless some another witness corroborates about the incident of Aiyub with details. According to the PW, Aiyub was burnt at 06:15 to 06:30 p.m. by A-44, A-2, A-55 and deceased Guddu.

(b) By use of car of this PW, the wall of Jawan Nagar was broken. This PW is the eyewitness of noon occurrences where, houses of Muslims were burnt and gas cylinders were burst.

(c) The PW is held to have been threatened by A-2 to strike out names of A-2 and A-37.

(d) The active presence and participation of A-2, A-37, A-44, A-55 and deceased Guddu at the site has been proved beyond all reasonable doubts in the morning incident.

(e) The presence and participation of A-2, A-44, A-55 stands proved in the evening occurrence.

(f) As A-37 was leader and it is only after she came on that day the disturbances started she needs to be held as Kingpin. A-37 and many other accused are held to have hatched the criminal conspiracy as mentioned in the charge.

(g) The PW has suffered damages.

12. PW-112 AND OTHER PW :

(12.1) This witness supports the prosecution case of conspiracy among the accused to commit the crime as she says at para 6 that the mob came with the deadly weapon and with

the arrangement of diesel, petrol etc.

(12.2) Numerous occurrence PWs, PWs who involve dead accused in the crime and in fact, out of the total 173 PWs about 150 PWs of them very clearly and firmly bring on record the fact about the presence and participation of the accused with deadly weapons on the day. This fact is possible only if there is meeting of mind, agreement, pre-meditation, preconsort and preparation among the accused. When so many accused behave in a similar way, at similar site and time, it itself speaks about conspiracy at a large level. The accused had sufficient time to make all the preparations.

FINDING OF PW-112 AND OTHER PW :

(a) The criminal conspiracy to have been hatched among the accused stands proved.

13. PW-219 AND OTHER PW :

(13.1) This witness and many of the PWs give an account of the day of the occurrence. She deposes that there was tremendous hue and cry, clamourous atmosphere and uproar all around on the road for the tragedy of Godhra carnage, at about 9 or 09:30 p.m. near Natraj Hotel, people were assembled who were giving slogans of Jay Shri Ram, they were screaming there and were burning tyres, carts, cabins, dwelling houses, etc. There is ample material on record to draw the inference of existence of conspiracy on record.

FINDING OF PW-219 AND OTHER PW :

(a) This attitude shows that the accused and others have made up their minds to do away, destroy and damage Muslims, they were apparently charged and provoked as their action so speaks and even this has to be treated as preparation and preconsort.

(b) The witnesses prove hatching of conspiracy amongst the accused.

14. SUPPORT FROM EXH.1776/1.

(1) A complaint of one Rahimbhai Shaikh, resident of Chetandas-ni-chali has been annexed in the record of C Summary which has been produced in this Court from the record of the Court of learned Metropolitan Magistrate. The complaint of this Rahim Shaikh unfortunately, has not been investigated or for which no FIR has been drawn is found to have been tagged on page 2 of Exh.1776/1.

(2) Shri Rahim Shaikh seems to have been eyewitness of murder of his wife Rabiabibi, who has specifically stated that wife Rabiabibi was burnt alive by sprinkling kerosene. It is stated that A-1, 10, 22, 18, 44, 41, 52 have made all the preparations on the earlier day to commit this offence. This complainant is father of PW 217 and PW 218. In this involvement of Guddu and Bhavani has even been shown. The contents of the complaint of the year, 2002 is pointing to the existence of criminal conspiracy.

FINDING OF EXH.1776/1 :

(a) This complaint made in black and white shows a very strong circumstance of premeditated, preplanned commission of offence wherein all the accused were conspirator and or co-conspirator.

15. SUPPORT FROM THE COMPLAINT - EXH.1773

(1) Exh.1773 is the complaint of I-C.R.No.100/02 which was given by PSI Mr.Solanki before first I.O. Mr.Mysorewala himself.

If this complaint is perused, it is stated therein that mobs of people from Krishna Nagar, Saijpur Fadeli Tower, Kuber Nagar Bungalow area and Chhara Nagar had come. Active leaders of B.J.P. were present in the mob who were instigating the mobs.

In the humble opinion of this Court, in any area, normally none can be more active leader than the M.P. or M.L.A. It is not only undisputed but even admitted fact that A-37 is the M.L.A. of B.J.P. - the ruling party then, from Naroda Constituency, hence it is clear that she hails from and she is on the date of the occurrence in B.J.P. Now, if she cannot be termed to be active leader of B.J.P. that too in Naroda Constituency, then who else can be called the leader of B.J.P. in that area. It can therefore, be inferred that A-37 was present at the site. The police officer has very specifically stated that the active leaders were instigating the mobs.

Therefore, it can be safely inferred that A-37 was

instigating the mob that too in the morning hours at the site of the offence but, the police has made conscious efforts to screen her presence.

(2) L.A. Mr.Kikani has submitted that since all the police officers are not at all stating about the presence of A-37, the victims who are falsely roping A-37, cannot be believed. This Court can safely inferred that how V.I.P., like M.L.A. gets treatment from police. Therefore, when the occurrence has so much flared up and when the result was in so much casualties, no police man would involve the M.L.A. of the area and even if the police desires to involve, the police normally would not be successful in doing so. The attempt is not to say that every police officer is influenced by the politicians, but it is not impossible as well.

(3) Moreover, no police officer could be aware on the date of writing the complaint that there would be any order for the further investigation and that too by special investigating team. As it may be, but the fact remains that whatever stand once the police has taken that too in the complaint itself, the police has no option, but to maintain the same stand. It is different that the police is projecting five persons named in the FIR as were present in the mob. In the peculiar facts and circumstances, since the name of biggest leader viz. A-37 was not possible to write down in the complaint, the names of others have been written.

(4) This Court firmly opines that the complainant and the first I.O. try to unravel the presence of A-37. At the cost of repetition, it is to be noted that the complaint at Exh.1773

strongly supports the prosecution case of the conspiracy having been hatched amongst the accused there. The above position is one of the reasons why this Court has thought it fit not to conclude guilt of any accused solely relying upon the police PW who are apparently party to screen the truth.

16. PROBABILITY OF PRIVATE POSSESSION AND USE OF FIREARM :

Before summarizing the topic of conspiracy, it needs to be added that A-18 has confessed in his extra-judicial confession that he has made the preparation on the intervening night of 27/02/2002 and 28/02/2002 after coming from Godhra for the occurrence next day and he has collected 23 firearms from different owners of firearms even by threatening them. He has also confessed that the co-accused were also present in the occurrence. This is also probablising the possession and use of private firearms by the accused in the morning incident. A-18 has also confessed use of the firearm. Many PW involve different accused for possessing and using firearms in the communal riot for injuring, terrorizing people and to burst gas cylinders in the dwelling houses of the victims.

FINAL FINDING OF PART-3 ON CONSPIRACY :

Summary of the Testimonies of 13 PWs :

PW 52, 104, 112, 136, 143, 149, 156, 176, 192, 198, 219, 227 and 236.

(A) All the above witnesses proved beyond reasonable doubt that A-37 was present at the site of the offence viz. near

Nurani Masjid, S.T.Workshop Opposite Nurani Masjid and Jawan Nagar Khada close by to Panchvati Estate, Uday Gas Agency etc. in the morning. She seems to have visited the site twice. All these places are extremely close by to one another.

(B) As is proved A-37 had even visited in the evening when she was near the S.T.Workshop alongwith A-44 which is supported by extra judicial confession of the co-accused about the visit of A-37 in the evening also. The presence of co-accused like A-41, A-44, A-45 etc. is also on record.

(C) All the witnesses except PW 143 and PW 236 have stated that they have seen A-37 in between 09:00 to 09:30 a.m. which obviously is an estimated time and based on their sense of the timing they having come out of their houses. Since most of them are absolutely illiterate, do not Know Gujarati language, majority of them belong to Karnataka State, they have their own limitations even expressing in Hindi language, they are daily wagers, rickshaw drivers, housewives, have no much perfect sense of timing and are rustic witnesses the appreciation of their oral evidence has to be accordingly done.

That in the peculiar facts and circumstances of this case, their testimony has to be appreciated keeping in mind that when they say between 09:00 a.m. to 09:30 a.m. it could be half an hour or a few minutes more here or there (The situation on the day was so tense that no witness would see watch to enable him to give perfect account of time before the police but what they state is their own estimated time. It cannot go out of mind that this time given by them cannot be taken as their mere guess work because when they rose up, got

themselves fresh, they were at their home and in easy mood since on account of *bandh*, they have not to go for their occupation and therefore, atleast they can be believed for sure about the timing they learnt about the disturbances and they came out of the house.)

PW-236 has deposed that A-37 has visited the site twice in the morning. According to him second time she came at 11.00 a.m. this tallies with PW-143 who states that A-37 was seen by him at Khada at about 11.45 a.m. or 12.00 noon. This Court therefore, believes that the prosecution through these eleven witnesses has proved beyond reasonable doubt that the A-37 was present at the site somewhere between 09:00 to 9:30 a.m. and then she was seen again at the site somewhere near 11.00 to 12:00 noon. Thus, in the morning, as the evidence shows she was seen at the site for two times.

(D) Learned Advocate for A-37 emphasises that the presence of A-37 at the site is not proved and she puts up defence of her alibi. Surprisingly in Exh.2473 the written presentation at the end of the F.S. it is neither mentioning defence of alibi nor contends that on 28/02/2002 after completion of Assembly at 08.40 a.m. and onwards where she was. This Court is aware that the accused is not required to speak but when the defence of alibi is taken, the accused may spell.

PW-310, Exh. 2190 :-

(D-1) It is true that the C.D. produced by A-37 of the proceedings of Legislative Assembly of the Gujarat State read

with the deposition of PW 310 and upon perusal of Exh.2190 and more particularly the Presence Register wherein A-37 has signed it becomes clear that on the date of the incident, she had attended Legislative Assembly, but then the Legislative Assembly has worked on that day from 08:30 a.m. to 08:40 a.m. only. There is substantial evidence from PW 310 who has also produced the documentary evidence as mentioned hereinabove about the proceedings of the Legislative Assembly, it stands proved that A-37 was at Legislative Assembly viz. at Gandhinagar upto 08:40 a.m.

(D-2) In deposition of PW 327 at paragraph 351, the I.O. has admitted that one Amrish Govindbhai Patel has stated in his statement before Mr. Mal (I.O. of Naroda Gam Case) that A-37 was at Legislative Assembly upto 09:00 a.m. and upto 12:30 p.m., she was at Civil Hospital and from 03:30 p.m. also again she was at Civil Hospital.

In the opinion of this Court, Amrish Govindbhai Patel has not been examined as a witness before this Court by either of the parties. The statement relied upon by the defence during the cross-examination is the statement before Police Officer and is not the testimony on oath before this Court.

The gist of Section 11 of Indian Evidence Act in the case says that the plea of alibi has to be either put up by the accused or it can be brought on record by creating reasonable doubt about the presence of the accused at the site. It is not on record who is Amrish Govindbhai Patel, no chance has been offered to the prosecution to cross-examine this witness, hence the versions stated before the police that too before I.O. of

another case and not before PW 327 himself cannot be even looked into. Even it is unimpeached version hence cannot prove the alibi attempted to put up by A-37. This is not found credible which can create reasonable doubt against the version on oath given before this Court by 11 PWs. It is more so when in that very paragraph 351, PW 327 has stated that during his investigation, many witnesses have stated that at the relevant time, A-37 was at the site of the offence.

Considering the above discussion, this Court is not inclined to hold that plea of alibi has been proved or reasonable doubt has been created against the evidence of presence of A-37 at the site on the date proved by the prosecution through its numerous witnesses to the satisfaction of this Court.

(D-3) In paragraph 352 of the testimony of PW 327, the witness shows that the statement of Dr. Anil Kumar Chadda creates a situation where the defence seems to be very lame, weak and hence not credible or able to offer even plausible explanation. This does not support the submission made in the oral submission of claiming the plea of alibi.

This Court is aware that even this statement is the statement before Police Officer hence is of no worth. Had A-37 been really at Civil Hospital for so many hours, she could have examined Dr. Anil Kumar Chadda as her witness to prove her special defence of alibi.

(D-4) Paragraph 353 of this very witness clarifies that the statement of one Dhirajbhai Lakhabhai Rathod before the Police reveals the presence of A-37 at about 10:00 a.m. at Sola

Civil Hospital, she was there for some 15 minutes at morgue and then she left from there. She was seen by Shri Rathod upto 11:30 a.m.

(D-5) Paragraph 354 is suggesting that P.I. Shri Mansukhbhai Dungarbhai Lathiya has also given his statement according to whom the accused was at Civil Hospital, Sola from about 10:00 to 11:00 a.m. To avoid repetition, suffice it to say that all that has been discussed for para-351 for police statement is applicable here also hence both the paras like para 352 and 353 cannot be attached any value. In any case, no reasonable doubt is created against the positive, direct and credible evidence of presence of A-37 at the site on that day.

(D-6) The other witnesses whose statements were taken by the police have also been referred but since the point to be decided is about the presence of A-37 at the site in the morning, the remaining witnesses are since not related to morning time and are related to time after 02:00 p.m., they are found absolutely irrelevant hence they need not be discussed. Moreover, even these are again the police statements to which no evidentiary value is attached.

(D-7) Along with Written Statement given after F.S., A-37 has produced Exh.2479 and Exh.2480 which both are deposition of two witnesses before the Court of Brother Judge who is trying riot case of Naroda Gam.

The witness at Exh.2479 states that he saw A-37 at about 10:00 a.m. The witness whose deposition is at Exh.2480 is one Kantibhai Bhikhabhai Soni who has deposed that he saw

A-37 somewhere in between 10:00 a.m. to 10:30 a.m. and since the mob has protested against her presence, she has gone from that place.

In the humble opinion of this Court, as it is so provided in Section 33 of the Indian Evidence Act, the testimony given in another Court and in another judicial proceeding can be relevant in any subsequent proceeding only if it satisfies the requisites of section 33 viz. if the said witness is dead, cannot be found or is incapable of giving evidence or is kept out by opposing party or his presence cannot be secured without delay or expenses etc.

In the case on hand, none of the circumstance has been submitted or proved to have been existed on the record hence, these testimonies before another Court cannot be looked into wherein the prosecutor of this Court has been deprived of his right of cross examining the witnesses. Even the Court had no opportunity to know and note demeanour of the witnesses hence these testimonies cannot be accepted by the Court.

Even if the testimonies are perused to look into for plausible explanation of the A-37 then it is clear that none of the witness is sure about the time of arrival and departure of the A-37, but it is clear that her presence was objected to by the persons present there and had she not been escorted, she would have been attacked there. Therefore, it cannot be believed that she could have been at the Sola Civil Hospital for long time because it is matter of common experience that the reaction of the mob would not come after the person to whom

the mob was objecting remains there for one hour or so. If the mob is furious, the mob would not allow the person to remain there even for few minutes, hence the two different testimonies and the paragraph referred from the testimony of PW 327, to exhibit that she was at Sola Civil Hospital is not credible one. Even if entire submission of A-37 is accepted and when it is read along with the testimonies of the numerous PWs then also A-37 has not reached Sola Civil Hospital in any case before about 10:45 to 11:00 and that she was compelled to leave the Sola Hospital immediately and that she must have left maximum within 15 minutes. As put up by the defence, it seems that the climax of the anger of the mob is reflected when P.I. Mr.Lathiya had to arrange to escort A-37 to put her away from the mob and to save her to be victim of the furious mob.

This Court, considering all the circumstances on record and even if it is assumed that the defence is completely right, then also, A-37 might have reached Sola Hospital in between about 10:45 to 11:00 a.m. and has left in between 11:00 to 11:15 a.m. in any case. Hence no plausible explanation of the A-37 is found credible and probable.

(D-8) There is no cogent, convincing or reliable evidence to conclude that the presence of A-37 was not at the site in the morning hours as have been testified by the witnesses. Even no reasonable doubt is created against the versions of the witnesses who have stated that A-37 was at the site in the morning. As comes up in Sting Operation, she was even present in the evening. The evidence speaks of the presence of A-37 at the site on about 09.30 a.m. onward and from 11.45 a.m. onward therefore that presence becomes more credible

than the defence put up on absence of A-37.

(D-9) In the humble opinion of this Court, the suggestion to PW 104 put up by the defence is not disputing the presence of A-37 at site, but the intention or purpose of presence is disputed. This does not tally with the written presentation and the annexed documents.

This Court is conscious that such suggestions can never be used to prove the prosecution case beyond reasonable doubt, but what is humbly being opined here is that, after appreciating the testimony of mentioned 13 prosecution witnesses in this part and further perusing with the documents discussed since this Court is convinced about the presence and participation of A-37 at the site of offence in the morning and evening hours, these suggestions need to be read in light of the truth put forth by the 11 witnesses discussed herein before hence, it stands proved beyond reasonable doubt that A-37 was definitely present at the site any time after 09:30 but before 10:30. It is probable that the A-37 can be at Naroda Patiya by about 09:30 a.m. if it is kept in mind that the assembly was over by 08:40 and in any case, she must have left Gandhinagar in between 08:40 a.m. to 09:00 a.m. In such case, it is very much probable that she could reach at Naroda Patiya at about 09:30 a.m.

Another important aspect is also to be kept in mind that the accused being M.L.A. of the Naroda Constituency and since it was a tense day and when there was call of *Bandh* by Vishwa Hindu Parishad, A-37 would obviously be inclined first of all to reach at her constituency, which is quite natural

tendency of any person in political life. Even the facts and circumstances of the case are strong and capable enough from which only one inference can be drawn that the first priority of A-37 must be to reach at Naroda after the assembly was over.

(D-10) It has been proved beyond reasonable doubt on the record that right from 08:30 a.m. to 9:00 a.m., the Hindus have started gathering on the road and then at about 09:00 and onwards many Hindus came out of their houses or came at the site with different deadly weapons in their hands. It is needless to specify that those who came at the site with weapons and those who came from the distance to the site of offence by leaving their family alone at their houses must have come at the site with an intention in their mind which intention is obviously to take revenge of the Godhra Carnage that too at the site which is admittedly Muslim locality which stands proved by their conduct later.

(D-11) When the members of the mobs gathered with weapons, it is clear that they were fully prepared. These two vital aspects are the strong circumstances to hold that the mobs had mens rea, common actions of being armed with deadly weapons, reaching at common place at Naroda Patiya, reaching at Muslim religious place Nurani, attacking Muslim chawls as per the common design, adoption of common modus of burning Muslims and their property clearly can infer common design, common intentions, common objects etc. which shows presence and existence of conspiracy and common objects. The mob was so much prepared to have come with deadly weapon, were fully charged after arrival and provocation, instigation and abetment of A-37. Upon the

excited verbal expression of A-37 the mobs as above had immediately started to act in compliance of their design. Thus, the conspiracy with intentions and objects mentioned in the charge Exh.65 and other such objects was hatched among all accused under excited leadership of A-37.

From the fact and circumstance of the case no other judicial inference can be drawn except hatching the conspiracy among the mentioned accused and having executed the conspiracy through the unlawful assembly.

(D-12) Moreover, the fact that some of the members of the mob has pouch with some liquid may be water and packets of snacks packed in their waist pockets is an additional strong circumstance supporting the judicial inference that the accused have hatched conspiracy to do away the Muslims and to damage, destroy, ransack their property etc. for which preparation was also made to be there for long time.

(D-13) As is already proved beyond reasonable doubt that there was a large crowd of Hindus who had weapons in their hands who were very much excited and angry and were out to settle the accounts with Muslims and to do away the Muslims. Keeping in mind the above situation which is hard reality, it cannot be believed that the leader of the area viz. elected M.L.A. of the area would address to the gathering otherwise than the mood of the mob. The mood of the mobs would be such that first of all, such mob would attack her if she preaches or advises to not do illegal acts which has not happened. This shows that she has not played any positive role of pacifying agent as suggested to PW 104.

(D-14) Secondly, the temptation to take political mileage from such situation can easily be inferred qua A-37 and in such situation, and in the facts and circumstances of the case and when she was found among the Hindus, and addressing the Hindus, the said words cannot be anything else but provocation and instigation to Hindus to attack Muslims.

(D-15) The PWs have stated that it was only after A-37 arrived, it was only after she talked to them, it was only after she talked in a loud and excited voice with the Hindus gathered there, the disturbances started, then after slogan shouting began, the mob was so excited then after that even the firing also took place after her arrival at the site. It cannot even remotely be perceived that the M.L.A. of the Constituency would talk to majority (Hindus) in the atmosphere of that day to pacify as because of that, they would be displeased.

(D-16) The gestures of A-37 observed by the PWs, the action of A-37 noted by the PWs and the result of uncontrollable communal riot and unforgettable massacre which was of the rank of genocide took place at the site are also tallying circumstances that A-37 was the leader of the massacre, she was the kingpin and it is but for her provocation, her instigation, her encouragement and her support and abetment, the entire massacre took place at Naroda Patiya which took toll of at least 96 Muslim human lives and injured about 125 Muslims.

(D-17) Private Firing :- It needs a note that PW 104 talks of private firing by A-2 and A-41, PW 52 talks of private

firing by A-44, PW 227 is also supporting the facts of private firing, A-18 is confessing in his extra-judicial confession about collection and possession of 23 firearms as a preparation for the occurrence. The death of one of the deceased was because of bullet injury, the PW 47, the P.M. Doctor, Exh.2020 and Exh. 2021 if all are collectively seen, and if the circumstantial evidence lying in it is read between the line the case of private firing in the morning incident stands proved beyond reasonable doubt. This finding gets strength when I.O. No.1 does not investigate on firearm used, remains of bullet in human body, FSL tests etc. as the previous investigators were not trying to bring the VIP accused on books. No attempts were made to confirm injuries in police firing only all are self-speaking.

FINDING [Finding of (D)]

This Court therefore, firmly believes that A-37 had reached at Naroda Patiya anytime about 09:30 a.m. onwards and about 11.45 a.m. which is very much probable and logical. In the same way, A-37 was also present in the evening near S.T. Workshop alongwith co-accused.

(E) Concluding The Discussion On Conspiracy :

Different witnesses have seen different accused, all in company with A-37 at the site. At some point of the site A-37 talked in excited tone, at some point, she encouraged the co-accused and in every case, she provoked, abetted and instigated the co-accused.

(E-1) PW 192, 236 and 227, etc. are specifically stating on oath about the participation of A-37 in the crime by

provoking, abetting the mob which was prepared with weapons in their hand but which did not have any courage to commit the offences until the arrival of A-37.

(E-2) Intentions and ingredients:

Several conspirators and co-conspirators have assaulted simultaneously at Nurani, at Muslim chawls and on persons and properties of Muslims. Modus operandi is exactly similar, preparation of the accused of possessing deadly arms was common, uniform of khaki half pent, saffron belt was common, time of arrival from different directions was common, attack on religious place of Muslim, choice of the site Muslim locality, are all sufficient and satisfactory material to infer agreement among all the accused and sharing of common intentions by all.

The above established facts inspire the Court to draw an inference of existence of criminal conspiracy among the accused under leadership of A-37 and seconded by A-18. There is apparent connection between the conspiracy and acts done pursuant to it.

(E-3) The conspiracy can clearly inferred to have been hatched at anytime after visit of A-18 at Godhra and anytime before arriving at Nurani on 28/02/2002 in the morning as is revealed in extra-judicial confession of A-18, common intentions were perceived, agreement to do illegal act of communal riot, to commit offences against human body, property was realised by any means of communication as had it not been so it is impossible that when the *bandh* was for entire

day, all the accused would meet at the same time, same place, with same preparation and perceive and share common intentions which was an agreement arrived at among the accused to do illegal acts. The intentions are inferred to be as below, as emerges from facts and circumstances on record.

[a] To ventilate the anger of Godhra Carnage.
[b] To take revenge with Muslim community.
[c] To destroy, ruin and to damage properties of Muslims.
[d] To do away Muslims to raise the death toll so many times more than Godhra Carnage.
[e] To terrorise Muslims etc.

(E-4) The co-conspirators of A-37 were out to execute the conspiracy and to carry out the task viz. the commission of the offences for fulfillment of the object. With the common intentions and agreement, the assault were initiated by the unlawful assembly. Secondly, she was the current M.L.A. of Naroda constituency and the site of the offences were part of Naroda constituency. Thirdly, political inclination would always be to take political mileage of such situation. A-37 cannot be exception to it.

(E-5) The later conduct of co-conspirators of A-37 emphatically clarifies, specifies and proves beyond all reasonable doubt that the co-conspirators were fully charged to execute the conspiracy which is clear from the modus operandi adopted by all of them and the result they have achieved at the end of the day injuring 125 Muslims and killing by burning alive or cutting and then burning about 96 Muslims.

(E-6) The presence of A-37 throughout the day is not an essential ingredient to hold her liable for abetment through hatching the criminal conspiracy and or to instigate the co-conspirators to execute the entire conspiracy. In light of the explanation under Section 109 of IPC, it is clear that the offences were said to have been committed in consequence of the instigation of A-37 and it was also in pursuance of the conspiracy hatched by all the conspirators under the leadership of A-37, hence A-37 is liable for all the acts and omissions viz. the offences committed throughout the day by the remaining conspirators in company of the other accused for having abetted all those offences committed on that day.

(E-7) It is also required to be noted that the offences for which A-37 has abetted had happened in fact. As soon as the offences are committed to execute the criminal conspiracy all the conspirators including A-37 have had joint responsibility and the accused who was not present throughout would also be vicariously liable on the principle of constructive liability.

It is very settled position of law that from the fact which stands proved by the oral evidence of the PW, inference can be drawn of other facts.

(E-8) **Plea of Alibi** :- The illustration given at Section 11 makes it amply clear that when the distance between the place where the accused claims his presence and the distance between the place where the prosecution alleges the presence of the accused are too much which makes it practically improbable to hold for any logical mind that the person cannot cover the distance in any circumstances then and then only

the plea of alibi can be entertained. The illustration of Section 11 of Indian Evidence Act speaks of Calcutta and Lahore which are east and west and therefore, plea of alibi cannot be believed for the places in the same city or the twin city like Gandhinagar and Ahmedabad where it is extremely probable to very easily cover the distance and reach at the place and more particularly the A-37 being V.I.P. she must be with her security and for her the traffic also would be cleared, hence for political personality and leading person like A-37, it is not improbable to reach from Gandhinagar to Naroda Patiya, Naroda Patiya to Sola Civil Hospital and returned from Sola Civil Hospital to Naroda Patiya, this Court therefore, infers hatching of conspiracy between A-37 and the co-accused to commit the charged offences wherein A-37 has abetted by conspiracy and by instigation for commission of charged offences. A-37 and all the co-conspirators were apparently in agreement and were sharing common intentions.

(E-9) It is true that A-37 has not remained present throughout the day, but then through the conspiracy she hatched, through the encouragement, leadership, support and instigation she provided, she has abetted all the offences committed throughout the day by the conspirators and by all those who then after had formed unlawful assembly with the objects mentioned in charge Exh.65. A-37 though was absent while some of the offences were committed, her abetment by the conspiracy hatched and by her instigation to the co-accused involve her in all the crimes committed through out the day.

(E-10) The accused who all have met A-37 on that day were all having pre-consort and had unanimity, before initiating to

commit the crimes, on the intentions shared and objects to be realised at the end of the day because had it not been so, then the manner in which the offences were committed would not have been committed and the vigour of the entire unlawful assembly would not have been that powerful as it was.

(E-11) This Court has reasons to hold that A-37 was kingpin. Firstly, it is very clear from appreciation of the oral evidence of the eyewitnesses that until she arrived the commission of the offences were in fact not started, she was the person of the highest rank as far as the Constituency is concerned and the unanimity among the PW conveys that only.

(E-12) According to different prosecution witnesses so far discussed, it is emerging clearly on the record of the case that, deceased accused Guddu, Bhavani, Dalpat, Subhash Ramesh and certain live accused have assembled at the site of the offence on the morning of that day. There is no material to disbelieve the prosecution witnesses who involve name wise accused in specific, proving their having come at the site in the unruly mob with deadly weapons in their possession. At the cost of repetition it is opined that when the group of the accused have assembled on the same date, in range of the same hour of the day, at the same site with the weapons in their possession, the only inescapble logical conclusion which can be drawn is, the accused who assembled there were having common intentions and that they were in agreement with each other and that had there not been premeditation or preconcert among all of them, they would not have assembled with the same spirit, in the same manner, at the same site and with similar preparation. Hence, it is more than clear that these

accused were conspirators. It is also getting very strong corroboration from the sting operation where, A-18 has confessed that after seeing corpses at Godhra, he has decided and has given challenge to exhibit the result of more than 4 times at Naroda Patiya on 28/02/2002. The idea perceived by him then, was percolated to numerous accused, as, he himself confessed that in the intervening night of 27 February and 28 February he has prepared the team of about 29 to 30 persons and has collected about 23 fire arms from the Hindu owners of the firearms even by threatening all of them.

(E-13) All the accused were doing their own business, occupation for their living, A-37 was the M.L.A. of the Constituency, and that some of the accused have their business places in the locality. Unless the accused have arrived at an agreement, with intention to do illegal acts, to settle the score of the death of Kar Sevaks at Godhra massacre and unless they all were agreeing on the common platform of taking revenge with Muslim community, they would not have selected the site where, Muslims were inhabiting and where religious place of Muslims was situated. Thus, leaving aside their respective jobs, businesses, etc. assembling at one place, selecting the site of Muslim locality and Muslim religious place and then coming there with the weapon within the range of an hour of fixed time, are all the acts and omissions of the accused which are revealing commonness in them. This commonness is nothing but exhibiting the agreement amongst the accused to do illegal acts and that this very much proves on record that they all have conspired with each other. It is this conspiracy which has brought them together at one place. This Court is therefore, of the view that all those accused who have assembled in the

morning at and nearby Nurani Masjid with weapons in their hands, are certainly conspirators and that the judicial inference cannot be anything else, then, holding all of them conspirators.

(E-14) A-37 being the M.L.A. of the area can safely be inferred to have led the entire occurrence and it is but for her encouragement, her provocation, her instigation and certainly her abetment, the remaining co-conspirators, how so ever powerful they were, they would not have dared to do the massacre in the way it was done.

A-18 has however, emerged as one of the principal conspirators and one of the executors of the conspiracy. A-37 is a kingpin, is a leader, is an abettor and an instigator for the co-accused who have committed the charged offences, since A-37 acted in pursuance of the conspiracy and has instigated the co-accused and thereby, abetted all of them. It is she who abetted formation of the unlawful assembly as well, as it is extremely clear on the record of the case. It is known that direct evidence of conspiracy is seldom available. The Courts shall have to infer from the proved facts and circumstances of the case and that the proved facts and circumstances in this case, proves beyond all reasonable doubts that, all the conspirators have agreed to assemble at the site, in the morning hours, with weapons, with preparation, at the time when A-37 was to arrive. In nutshell, it is hereby held that, the accused who are proved to have been present at the site in the morning, were all the conspirators as their conduct so proves, who then have, executed the conspiracy under the active abetment and leadership of A-37 and as was designed by the principal conspirators.

(E-15) In the morning after about 9:30 a.m. or so the presence and participation, of **A-1** stands proved by about 8 prosecution witnesses viz. PW-73, 145, 172, 182, 184, 202, 149, 192, etc., of **A-2** stands proved by PW-104, 115, 143, 145, 149 and 184, of **A-5** stands proved by PW-149, of **A-10** by PW-145, 170, 182 and 184, of **A-18** stands proved by PW-149 and 198, that of **A-20** stands proved by PW-73, 104, 149, 184 and 204, of **A-21** stands proved by his extrajudicial confession before the PW-322 in the sting operation, which has proved to be voluntary and credible in the chapter meant for Sting Operation, of **A-22** stands proved by about 24 PWs viz. 56, 109, 112, 142, 144, 145, 147, 157, etc., of **A-25** stands proved by PW-94, 112, 185 and 199, of **A-26** stands proved by about 12 PWs viz. PW-83, 109, 112, 138, 142, 150, etc., of **A-27** stands proved by PW-144 and 145, of **A-33** stands proved by PW-200 and 213, of **A-34** by PW-167, of **A-37** stands proved by PW-104, 136, 176, 149, 192, etc. in all 11 PWs., of **A-38** stands proved by PW-135, 52, of **A-39** stands proved by PW-109, 170 and 202, of **A-40** stands proved by PW-184, of **A-41** stands proved by about 15 PWs viz. PW-73, 109, 113, 145, 167, 184, 188, 202, etc., of **A-42** stands proved by PW-150 and 183, of **A-44** stands proved by about 23 PWs viz. PW-107, 115, 142, 144, 145, 157, 170, 184, 186, 188, 200, 202, 213, etc., of **A-45** stands proved by PW-149 and 198, of **A-46** stands proved by PW-149, of **A-47** stands proved by PW-235, of **A-52** stands proved by PW-198, of **A-55** stands proved through PW-143, of **A-58** stands proved by PW-192 and 104, of **A-62** stands proved by PW-157 and 236 at the site of the occurrence which is the speaking evidence.

(E-16) In the humble but, firm opinion of this Court, these 27 accused are the conspirators and that this figure tallies with

the figure confessed by A-18 in his sting operation which, he has mentioned as team members of 29 - 30 persons to carry out the objects and to fulfill the intentions.

Those accused who have participated in the crime other than the morning occurrence, are the members of the unlawful assembly.

(E-17) It is clarified here that out of the 27 conspirators, 26 conspirators have formed unlawful assembly at the site itself which was due to instigation and active abetment of A-37, but, there is no evidence that A-37 became a member of the said unlawful assembly. As far as the 26 conspirators are concerned, they were conspirators and that, having hatched the criminal conspiracy, they have also executed the conspiracy for which they formed an unlawful assembly at the site for the morning occurrence with the objects to commit offences against properties, human body, relating to religion, of mischief, etc. Suffice, it to say here that, though 26 accused are hereby held to be conspirators, who all have hatched the criminal conspiracy under the leadership and with the agreement of A-37, the kingpin of the entire conspiracy, they all were also members of unlawful assembly.

(E-18) It is undisputed that the hospital of A-37 is very close-by from the site, she herself was the M.L.A. of the Naroda Constituency. The presence of A-37 as is suggested by the defence to PW-327 is accepted to be at her hospital at about 2:00 p.m. Even the fire brigade occurrence register tallies with this. Two visits of A-37 in the morning have been proved by different witnesses, A-21 and A-22 are clearly confessing in the

sting operation about the rounds and visit of A-37 to encourage the rioters and the members of the unlawful assembly. It has been testified by the PW as to in what words the A-37 has instigated the Hindu mobs on that day which all, if seen collectively, the presence of A-37 at the site of the offence, her role as an instigator and abetter and even as the principal conspirator stands proved on the record beyond all reasonable doubts.

(E-19) The 26 co-conspirators and the deceased Jay Bhavani, Guddu, Dalpat and Subhash Ramesh were present at the site who have continued to execute the conspiracy hatched by constituting unlawful assembly for the purposes mentioned in Section 141 of IPC. Hence, those co-conspirators have done all the offences read with Section 120-B and even read with Section 149 of IPC respectively for hatching the conspiracy and then doing the act in pursuance of the said conspiracy and becoming the member of unlawful assembly to execute the conspiracy hatched.

In view of the foregoing discussion, following final finding :

(E-20) FINAL FINDING ON THE ENTIRE CHAPTER OF CONSPIRACY :

It is hereby held that A-37 was kingpin, A-37 and A-18 are principal conspirators, A-20, A-22, A-41, A-44, etc. were leading persons and in all, A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (total 27 accused), have hatched the criminal conspiracy with intentions to take revenge with the Muslim community

and they were in agreement with each other to do illegal acts, while sharing the common intentions, as stands proved beyond reasonable doubt.

==X==X==X==

CHAPTER - II: STING OPERATION

In this case, 15 DVDs and 5 CDs have been produced on record, which were recorded by PW 322, while taking interview of different persons including the three accused of this case in the Sting Operation shot by him.

(1) Appreciation of DVD & CD :-

15 DVDs were shot, from which 5 CDs were prepared selecting certain parts to telecast on 'Aajtak' news channel under the name '**Operation Kalank**'. The DVDs were shot in a 'Sting Operation' by Tehelka.

A DVD or CD, to a certain extent, is at par with a document, but for its capacity to store even the visual images apart from the sound it can, for certain purposes, be treated as real evidence and can have more evidentiary value than a mere document. When treated as real evidence, it can be a strong piece of evidence by viewing of which the Court can form its own opinion on the facts in issue or on the relevant facts.

(a) In the case, the CD or DVDs have been properly and satisfactory proved. The PW 322 who recorded the interview and who had done the shooting in

question, has been examined as a prosecution witness.

(b) The prosecuting agency has obtained the certificates from FSL about its genuineness. The scientist from FSL Jaipur, PW 323, has been examined for the purpose. No reasonable doubt is created against the genuineness of the CD and the DVD and hence the same have been proved to be beyond reasonable doubt and is an admissible evidence.

(c) There is no challenge to the evidence, that what the CD and DVD contains is what was shot at the place of interview or not. It is only challenged with respect to the fact that the same was done under some inducement and in the alternative, the accused No.18 whose interview has been recorded, was merely reading the scripts given to him and that too, the defence has only been taken vis-a-vis A-18 and for the other two accused viz. A-21 and A-22 who are seen and heard being interviewed in the DVDs and in the CDs, have not been defended on any ground.

(d) For A-21 and A-22, the evidence of CD and DVD has remained unchallenged and uncontroverted.

(e) It may be observed here that though it is an admitted position that certain part has been taken by ‘Aaj-Tak’ in the CDs made from DVD, but merely

that would not create any doubt on the admissibility and relevancy of the CD or DVD as the evidence is what is seen and heard when it is played.

(f) The DVDs of the interviews recorded by PW 322 were viewed by this Court as one of the CD was certified to have become corrupt at this stage and that in search of truth and to examine the genuineness of the defence raised, it was necessary to view the concerned DVDs to notice the gestures of A-18. It was essential to ascertain as to whether the A-18 was reading a script or was interviewed and that, was he under any inducement or not?

(g) The judgement at **Sr.No.79** produced by the defence is of Hon'ble Punjab & Haryana High Court. This Judgement is relied upon to submit that the extra-judicial confession is a weak piece of evidence and should not be believed. In the facts of the case, page 6 which has been highlighted, reflects the facts of the cited case where the person whose extra-judicial confession was on record, was under the influence of liquor and the same was the outcome of the consumption of liquor, but in the case at hands, the defence has neither submitted nor it is the case of the defence that during the sting operation any of the accused was under the influence of liquor.

(h) In the very same Judgement, all those sentences which have been highlighted by the defence, are indeed based on the facts of the case and that there

is discussion that the extra-judicial confession was not finding any corroboration from any other evidence. But in the instant case, the corroboration is available from the oral evidence of PW 322 Mr.Khetan, PW 323 and the evidences of other prosecution witnesses and even documentary evidence on record.

In another highlighted paragraph, the discussion of the extra-judicial confession is related to the facts of another case, which does not exist in the case on the hand. Hence, this judgement would not be applicable to the case on the hand, the facts being different.

(i) **Section 17 of The Indian Evidence Act** provides that an admission means a statement, may be contents in electronic form, which suggests any inference as to any fact in issue or relevant fact.

(j) **Section 22A** helps the PW as it is provided that "When oral admissions as to contents of electronic record are relevant, oral admission in electronic contents are relevant if the genuineness of the electronic record is produced. Here, by a certificate of F.S.L., genuineness has been proved.

(2) RELEVANT CITATIONS :

It is propounded principle that if the extra-judicial confession passes the test of credibility, it can be basic for

conviction also. The Judgements discussed hereinbelow highlight the principle.

(i) **AIR 2011 SUPREME COURT 2283**
"Sk. Yusuf v. State of West Bengal"

It is held that to act upon extrajudicial confession it must be established to be true and made voluntarily in fit state of mind - Words of witness to whom extra judicial confession was made must be clear, unambiguous and clearly convey that accused is perpetrator of crime - Extra judicial confession can be basis of conviction if it passes test of credibility.

(ii) **AIR 2011 SUPREME COURT 1777**
" Kulvinder Singh v. State of Haryana"

(B) Evidence Act (1 of 1872), S.25 - CONFESSION - POLICE OFFICERS - Extrajudicial confession - Reliability - Accused had gone to Ex-Sarpanch of village and disclosed that they had committed murder of deceased and he should take them to police - Ex-Sarpanch took them to police who arrested them on same date - It is not defence version that they had been arrested earlier - Neither accused have challenged deposition of ex-sarpanch that he did not produce them before police, nor it is their case that they had been arrested from somewhere else - Ex- Sarpanch faced grueling cross-examination but defence could not elucidate anything to discredit him - Deposition of Ex-Sarpanch in respect of extrajudicial confession made to him by accused, is trustworthy piece of evidence. (Para 9)

(iii) Learned Special Public Prosecutor through citation at **Sr.No.22**, has submitted that it is held by Hon'ble The Supreme Court that corroboration for each and every piece of information mentioned in extra judicial confession, is not necessary. It can and will have the corroboration in general. It is held to be sufficient corroboration.

(iv) As has been held at **Sr.No.23** of the list of learned Public Prosecutor, the extra-judicial confession was voluntary, not out of threat, inducement or promise in terms of provisions of Section 24 of the Indian Evidence Act. The confession was corroborated by material on record was held to be proper.

(v) The judgement at **Sr.No.24** is to the effect that "no-doubt in law the confession of co-accused cannot be treated as substantive to convict other than the maker of it on evidentiary value of it alone, but, it has been often reiterated that if on the basis of the consideration of other evidence on record, the Court is inclined to accept the other evidence, but not prepared to act on such evidence alone, confession of co-accused can be pressed into service to fortify itself to act on it alone.

(vi) At **Sr.No.29 in para-29** it has been observed that, "….. no-doubt the extra-judicial confession is held to be of weak type of evidence. But, even extra-judicial confession can be made a basis to convict an accused without any corroboration. This proposition of law had been laid down in the case of **State of U.P. Vs. M.K. Anthony, AIR**

1985, Supreme Court, 48 : (1985) Cri.L.J., 493); which reads as follows:

"*There is neither any rule of law nor of prudence that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. The Courts have considered the evidence of extra-judicial confession a weak piece of evidence. If the evidence is about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to case a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.*"

(vii) As against the above submissions of the learned Public Prosecutor, learned advocate for the defence has also produced the citation at **Sr.No.62** to submit that the

extra-judicial confession was not truthful and was part of hallucination with which the prosecution and its witnesses were suffering. It needs a very special note that these are the facts of the case at Sr.No.62 but then in the case on the hand no such case has been submitted either by suggestions in the cross-examination or by leading oral evidence or even by submitting any documentary evidence that the witnesses or the accused were suffering from hallucination.

According to the meaning given in Oxford Dictionary, hallucination means "delusion, illusion, figment of imagination, etc". In the cited judgement, hallucination was held to have been suffered by the prosecution witnesses. In the instant case that is not the case. As far as accused is concerned, as already discussed herein above, defence has been raised qua the sting operation only for A-18 and that too defence is raised of PW-322 to have induced A-18 and / or A-18 was given a script who was reading the script, both of which have been dealt with in detail. Hence, the repetition has been avoided. Suffice it to say hear that the ground of hallucination is not applicable either to the PW or to A-18, 21 or A-22. Even A-21 and A-22 have not at all raised any defence qua the sting operation either through the cross-examination or while their further statement was recorded. In light of the above discussed facts, the judgement cited by the defence at **Sr.No.62** has no application in the facts of the case.

(viii) Another judgement has been cited by the defence at

Sr.No.73 wherein the accused had made the statement when he was under the influence of liquor and he was passing by the side of a magical superstitious act, it was held in that fact of the case that, such statements cannot be stated to be truthful and made while in complete senses.

In the case on the hand this situation, as has been discussed herein above in the cited judgement at **Sr.No. 73**, is not at all applicable and that it is nobody's case that the accused were under the influence of liquor or were not in complete senses when their extra-judicial confession was being recorded. That being the situation, even this judgement does not come to the rescue of the accused.

(3 TO 6) IN GENERAL FROM FACTS AND OPINION:

The Sting Operation carried on A-18, A-21 and A-22 has revealed that the offences were continued for the entire day and that what can be inferred from the conversation of the three accused is, along with three accused, there were A-2, A-20, A-37, A-41 and A-44 as well. Though for A-2, A-20, A-37, A-41 and A-44 these conversation solely cannot be the foundation to bring home their guilt, but it can be used as corroboration after marshaling all the evidence against the accused, which is capable to provide corroboration to any kind of evidence against the accused. In this Sting Operation, it is stated that A-37 has visited the site of the offence in the morning as well as in the evening on the date.

(3.1) A-18 and A-22 have revealed that they hated the Muslims too much and are very much interested in doing away the Muslims. Even A-18 had collected about 23 firearms on the previous might as preparation for massacre. They are absolutely unable to give any explanation as to for what reason, they came to Muslim locality and remained there for an entire day of the occurrence.

(3.2) This makes it abundantly clear that A-18 has made notable preparation for the massacre to terrorize Muslims, to take revenge of the Godhra incident of the previous day, to do away Muslims in more numbers than the death toll at Godhra Railway (S-6) Carnage. A-18 seems to be very much committed and determined to do horrifying massacre at Naroda Patiya.

(4) The submission of A-18 that what has been recorded in DVD and CD by PW 322 is not genuinely recorded, but is a created recording by PW 322 as A-18 was induced by him to read the script given by PW 322 and what is presented at recorded conversation is, in fact, created.

(5) As mentioned above, this Court has viewed the relevant part of DVD and CD to test the defence raised. Almost all interviews of A-18 were recorded at his personal office where there were his men around, it was his area and the PW 322 has visited as guest. During every episode of the interviews, everything apparently seems to have been done voluntarily. The talks of A-18 with eye contact is not possible if one is merely reading the script. A-18 talks about many things including, his social activities (according to him) of saving Hindu women from Muslim men who were joined with wedlock.

A-18 also talks about his firm conviction and his severe disliking and opposition for Muslims and Christians, quoting them as two of his enemies. During the interview, A-18 was sitting on the main revolving chair in the room in a very resting posture, who talks with all vigour and the entire talk looks very natural. A-18 also talks about numerous police cases having been filed against him and that he draws the map of Naroda Patiya and explains to PW 322 as to how on the date of the incident, Muslims were cordoned, surrounded and how race murders were committed. From his talk, violence sounds to be extremely common and routine activity of his life. His association with V.H.P. and Bajrang Dal, according to him, is of 22 years. During the interview, he attends the phone calls, he responds to a caller stating that a reporter from Delhi is sitting in front of him and that even while telling this, nothing looks like he was reading any script. He was not even remotely appearing to have been talking under some inducement. He was absolutely free and talking voluntarily. There was no element of any compulsion on his talk. His conservation was very natural. The relevant VCD are No.1, 4, 9, 11, 12 and 14. The gist of the entire conversation recorded in the VCD have been attempted to put in the capsule form herein below which is accused wise.

(6) In the opinion of this Court, extrajudicial confession in this case possesses a high probative value as it emanates from the person who commits a crime, which is free from every doubt. PW-322 before whom the confession was given by A-18, 21 and 22 is an independent and disinterested witness who bore no eminence against any of the accused. This extra judicial confession, in case of all the three accused is relevant

and admissible in law under Sec.24 of the Indian Evidence Act. Law does not require that the evidence of an extra judicial confession should in all cases be corroborated. In the instant case, PW-322 is not a person in Governmental authority or in any manner an authority. There is no ambiguity in the version given. As emerges on record, more particularly from the oral evidence of PW-322 he has developed cordial relationship with the accused. Not only that, but he has also established link with the accused creating the base of institutional organization and he has projected himself to be a dedicated worker of Hindu Organization. The Hindutva in the three accused has been linked by PW-322 with his identity which he has assumed for the purpose of recording the sting operation. It is this identity and cordial relationship has created tremendous high level of faith and confidence in the mind of the accused where they felt that PW-322 is their own person and their interest is same. The extra judicial confession of all the three accused does not lack plausibility and inspires confidence of the Court. This Court is therefore, of the opinion that, though extra judicial confession in the very nature of things a weak piece of evidence, but, in the instant case, in a very peculiar facts and circumstances, this extra judicial confession needs absolutely no corroboration. It stands proved with the substantial evidence of PW-322, the C.D., V.C.D. and the oral evidence of F.S.L. scientist, etc. Hence, this extra judicial confession considering the foregoing discussion on its own merits is found very dependable, reliable, having the contents full of probability and that it is absolutely found safe to convict the accused on this extra judicial confession.

(7) Summary of C.D., D.V.D., Exh.2259 and from the deposition of PW-322

(a) Exh.2259 is the excerpts of the CDs and DVDs sent to F.S.L., Jaipur for its scientific examination. This has been prepared by F.S.L., Jaipur.

(b) PW-322 is the person who has interviewed and recorded the Sting Operation of the three accused viz. A-18, A-21 and A-22. PW 322 has also reproduced the gist of the conversation he had with the three - A-18, A-21 and A-22 in his testimony. At para-30 to 46, the conversation is with A-18, para-48 is the conversation with A-21, para-49 to 50 is the conversation with A-22, para-51 and 53 is the conversation with A-21 and A-22 and para-54 to 57 is the conversation with A-22. The gist of the conversation is testified by the PW 322, which is part of the substantial evidence before this Court.

(c) ABSTRACT OF THE CONVERSATION OF PW 322 WITH A-18, A-21, A-22 WHICH HAS BEEN TESTIFIED BY PW 322 :

(c-1) Para-30 to 46 of the testimony of PW 322 is from the Interview of A-21 by PW-322.

(c-2) Para-48 of the testimony of PW 322 is from the Interview of A-21 by PW-322.

(c-3) Para-49 and 50 of the testimony of PW 322 is from the interview of A-22 by PW-322.

(c-4) Para-51 and 53 of the testimony of PW 322 are from the combined interview of A-21 and A-22 taken by PW-322.

(c-5) Para-54 to 57 of the testimony of PW-322 are from the interview of A-22 (mainly) and some part of interview of A-21 taken by PW-322.

(8) To satisfy the judicial conscience, this Court also thought it fit to view the muddamal DVDs as one of the CD was certified to have become corrupt. This Court has also viewed the relevant DVDs and CDs and more particularly the parts concerning the three accused. It is observed by this Court that PW 322 through his testimony before this Court has testified certain glimpses of the entire conversation. While the DVDs were viewed, following points have been found worth producing on record which is again the gist and substance of the conversation in the words of the three accused. The summary of which is as under :

(9) <u>From the interview recorded by PW 322 with A-18 (D.V.D.)</u> :

PW-322 has also deposed that the interview of A-18 was recorded in the office of Babu Bajrangi near Galaxy Cinema. The gist of the revelation of A-18 is as under:

- Once we were in V.H.P., now in Shiv Sena; we (saying for Hindus) are not feeble - minded people (Kadi, Khichadiwale nahi hai).

- The abdomen of the pregnant woman was slit with the sword, a large number of people were done away at Naroda Patiya by him. They were charged by fanaticism,

They have slaughtered the Muslims, they killed them. Ravan's Lanka was destroyed. Hinduism is within them.

- They were equipped with sword, bombs. Petrol bombs were flung.

- "The moment I was noticed by the police, they immediately realized that now it would all be over (Meaning thereby police was afraid of him). Had I not been in Naroda, nobody would have dared to come out.

- 23 revolvers were collected at night. (talks for intervening night of 27/02/2002 and 28/02/2002). I shall not stop working for Hinduism until I die. I have personal notions about Hinduism. I have no fear even if I am hanged.

- The CHHARA tribe has long been indulged into stealing. They are powerful enough to overcome the Muslims. Now, there won't live any Muslims in India. The moment I saw corpses lying in Godhra, that very night I had decided and challenged that, 'There would be four times more slaughter in PATIYA than that of GODHRA.'

- I have two enemies, the Muslims and the Christians. I had been to Godhra. I have pretty good rapport with the police agency.

- There were 80 to 90 dead bodies lying in Naroda Patiya, which were burnt to ashes with kerosene. They used to kill whoever came in their hand, they used to attack from all the sides.

- I am accused of murdering many people. The *Chharas* were with me. We went to Godhra where at night, I had challenged saying, “they will face the consequences tomorrow”. My name is enough to bewilder the Muslims.

- Mayaben (A-37) had arrived at the Patiya at 04:00 p.m.

  If I am hanged, my last wish is to get two days' leave to blow all Muslims with grenades. I have too much hatred for Muslims. I would incite rioters to start ravaging their (Muslim’s) buildings and properties.

- Bipin Panchal (A-44) and Manoj Videowala (A-41) were there. That day, it was Haldighati battle fought vigorously.

- We were besieged. It was decided to slash them whosoever comes out. I had killed a lot of Muslims. The *Chharas* have slaughtered them.

- Mayaben kept wondering throughout the day in a car. I was a leader that day. We slaughtered Muslims, Patiya is half kilometer away from my house. I and the local public were there to do the massacre at Patiya. If one would go to Godhara, one would be provoked and would determine to kill all the Muslims then and there. We retaliated at Patiya. In Patiya, we had secured the highest death toll. Naroda village is at distance of half kilometer only.

- I would go to Juhapura and slit 500 Muslims by the evening. I would resort to shelling if Hinduism – so

demands. They (Muslims) started dying after we reached there. One cannot withstand the sight of Godhra massacre and might feel the urge to retaliate. One would feel of taking revenge then and there.

- I had gathered a team of 29 to 30 volunteers at night itself (talking about the intervening night of 27 and 28) and collected 23 revolvers on the previous night. It was the befitting response.

- We and the *Chharas* executed the Patiya carnage. Not a single shop was spared in Naroda Patiya – Everything was burnt to ashes. The Muslims were slaughtered. We used their gas cylinders lying in their houses.

- A pig was tied over the mosque. A tanker full of diesel was smashed into Nurani and the tanker was dashed with the mosque. We could dash into mosque and all was set afire under our leadership.

- At night, we got free petrol from the petrol pump. Then the massacre followed and everything was set ablaze. Any Muslim who dares to speak against me can no longer remain or reside in Patiya. The firearms were secretly placed elsewhere. I even did not use my licensed revolver.

- The Muslims were dazed with our valour. The men, women even the children were slit and burnt to death. Some Muslims could escape saying Jay Shri Ram and Jay Mataji. The carnage had occurred just behind the S.R.P. On return from Patiya massacre, we felt very elevated as

if we were ‘King Pratap. There were 50 - 60 Policemen. We were co-operated by Police.”

The above are the abstract of the interview of A-18. This Court is to discuss the depositions of the victims at Part-5 of this Judgement. It is sufficient to mention here that the record of 'C-Summary' brought from the Court of Learned Metropolitan Magistrate, has a complaint at Exh.1776/22. It has been discussed in the chapter of R&P of C-Summaries that Exh.1776/22 is strong supporting circumstance on the part of the truthfulness of extra-judicial confession of slitting a stomach of Muslim pregnant woman which is noticed to be truthful while appreciating the evidence. As such, extra-judicial confession itself is sufficient and satisfactory evidence to convince this Court that A-18 has slit stomach of pregnant woman. Nobody has heard or seen the Muslim woman mentioned in complaint Exh.1776/22 or that Muslim woman to have survived till the date, which is beyond seven years. Hence, question does not arise to doubt on happening of the occurrence. It is therefore, inferred by the Court that the said Muslim pregnant woman died on that day of riot.

In fact, in the case at the hand, there is charge of slitting the stomach, of pregnant Kausharbanu, by A-18. It was forcefully submitted that the story of Kausharbanu is the development after the Sting Operation and is entirely fabricated. No such incident has happened. Exh.1776/22 is not tried and proved fact but it indicates that such occurrence was complained of right in 2002 even before Sting Operation. The other evidences are to be discussed at an appropriate part of the Judgement.

(10) <u>From the interview recorded by PW 322 with A-21</u>:

- One word from Babu Bajrangi (A-18) and there would be crowds thronging. The entire Chhara Nagar would be out at his single call (for A-18). Babu Bajrangi is the lion – incarnated of the Hindus. Even today, we would just blindly follow Babu Bajrangi.

- Bursted many gas cylinders, but the mosque was not much shaken. Firstly, they dashed into the Muslim chawl, second time also, 12 Muslims were killed."

- Tiniyo Marathi (A-55) was there. Mayaben (A-37) was there where the occurrence took place. She said, "Kill, them. I am and will be with you always. You will always have my backing." Mayaben was there for 30-45 minutes." He was in riotous activities. Used baton, stick, sword and trident. Had weapons which they had used on that day of riots.

- "A-22 has all kinds of weapons except revolver. Guddu Chhara was very bold, he also killed many Muslims. His owe was too much. Suresh (A-22), Guddu (dead), Naresh (A-1) were not tired. They did very well.

- I had cut off hands and legs of many. I was not going inside (Muslim chawl). All other Chharas went inside. I was outside and who ever was coming out I was beating that person and made him turned back inside the chawl where other Chharas were there.

- Bipin Panchal (A-44) came along with his team men at the Muslim Chawl. They all went inside. Since Hindus were killed, they also needed to be taught lesson. Suresh (A-22) has strong enmity with the Muslims, he has kept a Muslim woman (as mistress of A-22) in tussle with some Muslim. In fact, he was to marry with the elder sister of this woman but only before a day of that marriage, he ran away with this woman. He ate, slept everything with the elder sister of this woman. After this, Muslim did not do anything because Muslims are afraid of Suresh (A-22); even certain policemen are also afraid of Suresh.

- Mayaben assured us, “I am with you.” Babu Bajrangi is our God, we will obey his orders. Mayaben said, “I will always be with you and stand by you.” Babu Bajrangi would secure release of anyone from the police custody with only one phone call. Babubhai (Ref. A-18) had arranged from within the Jail for Rs.1000/= to be paid to each of their family at their doorstep.

- Vishwa Hindu Parishad was known by the name of Babu Bajrangi (A-18). Tiniyo Marathi (A-55) was also there, a Nepali and another Marathi were also there. Mayaben delivered a speech there (at Patiya).”

(11) <u>From the interview recorded by PW 322 with A-22</u>:

- “Manoj (A-41), Mayaben (A-37), Kishan Korani (A-20), Bhavani (dead), Babu Bajrangi (A-18) were the main leaders who were present there. Kishan (A-20) and Manoj (A-41), are closed aide of Mayaben (A-37). They are left

and right hands of Mayaben.

- Truck loads of weapons, pouches of water and snacks were brought in. Gas cylinders were used in the occurrence. We were helped (talks with reference to fiscal help) by Babu Bajrangi (A-18) only. Pipes, batons were taken from our home. I had participated in riots. I had no repentance for whatever I had done.

- Had Chharas not been there, then this RSS, VHP and Shivsena people could not have done to death the Muslims on that day. Mayaben was there at the site on the date of occurrence for the whole day up to 8 p.m., in her car taking round and on every round, she was telling us "You are doing proper deed, go ahead."

- After torching started, certain Muslims were killed and were thrown inside (in Muslim Chawl). Some Muslims were hidden in gutter. They closed the lid of gutter and put heavy brick on it. Dead bodies were found from there. The riot continued upto 8.30 p.m., because of doing stone pelting, giving knife blow, giving pipe blow, etc. we were tired. I was inside (Muslim Chawl).

- Mayaben was taking round in her car for whole day. Mayaben was telling "Continue, doing all these deeds, I am at your back". She wore white saree and put on saffron belt. We were doing slogan shouting and had saffron bend. We were throwing gas cylinder. I had killed one sleeping pig by giving spear blow. We tied that pig on mosque and unfurled the saffron flag. We had broken

minarets of mosque. Some 8-10 boys did all these. Even we dashed tanker with the mosque, by taking it in reverse direction often. That tanker was of a Muslim. One of them brought it taking away from Muslim. We could damage mosque with this tanker. The tanker was of kerosene or petrol. After sprinkling kerosene and petrol like fire brigade sprinkles water, we had burnt Muslim Chawl. We had broken the wall of mosque by reversing the tanker often. Some were also killed there. The Chawls were set ablaze using petrol."

- Rape was committed by 2-4 of them. About 2000 of Chhara went inside the Muslim Chawl, some drunkard or hungry men might have committed rape. If fruits (saying for girls) were lying, the hungry would eat it. In any case, she (the Muslim girl) was to be burnt, hence somebody might have ate the fruit.

- "2 to 4 rapes or may be more, might have been committed. Who would not eat fruit ? In whatever number Muslims are killed, it is still less. I would not leave them. I have too much of rancor (malice) against them (Muslims). Even I had also raped one girl, who was daughter of a scrap man (one who is in business of scrap) - named Nasimo, she was fat. I raped her on roof and then thrown her from there. I smashed her, cut her to pieces like 'achar' (pickle)."

- He speaks in interview to explain PW 322 what kind of pain he gave to parents "If our child is thrown in fire by him and if we see him thereafter our heart would burn."

Hence after the occurrence, being secured, they(Muslims) said "here is that langada who had thrown my child in fire."

- (On that day), Muslim did Tilak of blood, said Jai Shree Ram and saved themselves on that day but some of them were known to him (A-22), I had killed them. Mayaben told police that, "do not do anything today."
- According to PW-322, Sajan, the nephew of Ganpat (A-4) was sitting there with Suresh who told that 'had our tribe *chhara* been not there to help, the success of this riot was not possible'.
- No one has done as much as the Chharas have done. They (Muslims) had settled for sixty to seventy years – in Naroda Patiya. They were rescued by S.R.P. In 1969 riots.

OPINION :

(12) The above are abstract of the interview of A-22. If depositions of several eyewitnesses like PW 158 are appreciated, if the deposition of victim of gang rape, Zarinabanu (PW 205 and wife of PW 158) is perused, if deposition of PW 142 is perused and while noting that the extra-judicial confession of A-22 to have raped a Muslim girl named Nasimo, it becomes doubtless that the occurrence of rape has also taken place at the site of the offence and on the date of the occurrence. The probability of outraging the modesty of Muslim women is also on record.

(13) The interview of some of the victims have also been found recorded in the DVD wherein also they have named some of the accused who have played lead role.

(14) CD and DVD are video and audio document wherein

voice as well as gestures have been recorded. Since vide Exh. 2259, the F.S.L. Report is on record, which certifies that the CD and DVD produced are genuine, not tampered with and not got up in any manner, this certificate makes the DVD and CD admissible in evidence. It is relevant since it contains the details about the incident and the interviews taken of A-18, A-21, A-22 and of other persons concerned with the crime by PW 322.

(15) The CD which is prepared from the VCD has also been certified by FSL for its genuineness and not having been tampered with. Hence the genuineness and even the evidentiary value of the said cassettes have not been affected.

As discussed, the cassette and VCD are not merely a document, but it is more akin to real evidence. Hence the Court can take cognizance of what is seen and heard in this DVD and VCD.

(16) It is very much on record, no new facts, not initially forming part of the case is now put up by the prosecution. PW 322 has prepared a script of three interviews which was given to the defence and those scripts are also produced on record by PW 322. PW 322 has kept these scripts in his hand and he has testified some of the parts of it. Even the copy of the CD has also been given to the defence.

(a) Moreover, the 15 DVD from which CDs were prepared were in fact on record and certified copy, prepared from Gujarat FSL were made part of record of muddamal of this case. In fact, SIT ought to have done that. The point here is

that, sufficient fair and reasonable opportunities were given to the defence and even PW 322 was also extensively cross-examined by the defence. Putting the defence of A-21 and A-22, it can only be stated that in fact, their conversation has not been offered any substantial challenge at all and that the conversation placed on record by PW 322 and proved to be genuine by the scientist of FSL, Jaipur have all remained uncontroverted and unchallenged. Unsuccessful attempts have been made to put defence of A-18 qua the conversation which all has been discussed hereinbelow.

(b) Since the accused have information right from the beginning as to what they have revealed in their interviews and that the accused also have been given full opportunity to know the contents of the CD and DVD and even the PW who has recorded the CD and DVD has also testified on conversation who was also extensively crossed by the defence, no doubt whatsoever is created against the prosecution case put up through this CD and DVD and the oral evidence of PW 322 and other concerned witnesses.

(c) At para-13, hereinbelow the appreciation of evidence of PW 322 has been done at length hence that topic need not be discussed over here.

(17) PW 314, Exh.2213 to 2216 :-

(a) PW 314 was the then Director of All India Radio/ Akashwani, Ahmedabad. He received Exh.2213, a request of SIT to take voice sample of A-18, 21 and 22. He undertook necessary correspondence with SIT vide Exh.2213 after

receiving sanction of the competent authority to record the voice sample, the recording was done.

Exh.2215 and 2216 are orders of Director General, Prasar Bharati, New Delhi, granting permission for voice sample recording. This witness through his staff, did record the voice sample of all the three and has also collected necessary documents to confirm the identity of the accused, necessary formalities like certificate, sealing the CD and giving it to SIT, the panchnama was drawn for it which is at Exh.2203.

(b) CROSS EXAMINATION OF PW 314 :-

PW 314 was cross examined on many aspects, but none of the aspect is such, the revelation of which has created any doubt in the mind of the Court about the official act done by the PW 314 through his officers to have been irregularly performed. At the cost of repetition, this being official act, is presumed to have been done in accordance with drawn procedure, rules and regulations. The sample voice recording of A-18, A-21 and A-22 has been proved to have been done quite properly beyond reasonable doubt.

(c) FINDING OF PW 314 :-

Hence, it is held that through this PW the prosecution has proved beyond reasonable doubt that the voice samples of A-18, A-21 and A-22 has been recorded absolutely in accordance with law and proper procedure was adopted for the same. No doubt is created on proprietary of that act.

(18) PW 320, Exh.2258 and 2259.

(a) During 2002 to 2009, this witness was at C.B.I., Bombay who received the order to carry out preliminary inquiry registered on account of the order of National Human Rights Commission. The inquiry was to the effect that in News Channel known as 'Aaj-Tak', operation 'Kalank' was telecast on 25/10/2007 in which programme, CD and DVD were used and that by carrying out the inquiry, the genuineness or truthfulness of those CD and DVD were to be examined.

(b) The witness did carry out the inquiry, recorded necessary statements like that of reporter of Tehelka, Shri Ashish Khetan (PW 322) as from Tehelka, the news Channel known as 'Aaj-Tak' has purchased the CD and DVD.

(c) According to PW 322, Shri Khetan, has prepared 15 DVD of the 'Sting Operation' (done on different persons including the three accused herein). It is from this DVD, 5 CD of the 'Sting Operation' were made. The witness has also interrogated A-18, A-21 and A-22; he has also seized camera, recorder, laptop, hard disk etc. and has sent all the *muddamal* to FSL, Jaipur (Rajasthan) to scientifically decide its genuineness. The FSL has given the report that these are genuine DVD and CD wherein no tampering has been done.

(d) The statement of the scientific officers of FSL were also recorded and ultimately, a report was given to N.H.R.C. by the C.B.I. The witness has kept DVDs and CDs from the *muddamal* and other *muddamals* were returned to Tehelka. The witness has then handed over those DVDs and CDs to the representative of SIT.

(e) The correspondence of the witness to FSL, Jaipur is Exh. 2258 along with parcels. The receipt, the opinion, the script made out of DVD and CD sent to FSL etc., from page No.1 to 138, viz. Exh.2259 were received by this witness from FSL, Jaipur.

PW 320 wrote Exh.2258 to FSL, Jaipur with request to examine the exhibit, to opine about its authenticity, opine as to, is there any editing or tampering in the 15 DVDs or not, whether there was shooting by the *muddamal* instrument, are the 5 CDs the excerpts of recording of the Sting Operation and whether any addition was made in the 5 CDs of Operation Kalank or not. The parcels were sealed and sent.

(f) Exh.2259 is receipt to have received the *muddamal* sent by the FSL, Jaipur; report admissible under Section 293 of Cr.P.C. from FSL; Jaipur – result of the examination which were favourable for all the questions, certifying the credibility, the genuineness and authenticity of recording DVD, CD which were found without any tampering. The speech, utterances, laughter, body language of the persons appearing in the recorded event were matching with video signals.

The script of the glimpses of the interview of PW 322 with A-18 and A-22 have been in written script in the document in Hindi which is of programme ‘Operation Kalank’ telecast in Aaj-Tak.

(g) CROSS-EXAMINATION OF PW 320 :

During the course of the cross-examination, the questions related to proprietary of the procedure were raised, but in light of Section 114 (Illustration-e) it is presumed that the acts have been regularly performed which is not found rebutted by the defence. All other questions are not material since the witness was only to decide the genuineness of CD and DVD.

An important aspect is clear when paragraph 31 of the testimony is read wherein the witness has stated that the persons including A-18, A-21 and A-22 have stated before this witness that the persons shown in the 'Sting Operation' are they themselves. The fact that the witness has admitted that A-18 has told before him that in the 'Sting Operation', he was given a script and the voice in the 'Sting Operation' is of him and that A-18 spoke according to the script.

(h) FINDING OF PW 320 :

Through this witness and Exh.2258 and 2259, it is clear that this witness has obtained the opinion of FSL about the genuineness of DVD and CD, about the fact that it has not been tampered with and that the recorded voice are that of the three accused. No doubt is raised about the genuineness and proprietary of the recording, the concerned recording in the voice of the three accused and CD and DVD are without any tampering whatsoever.

(19) PW 322, Exh.2273 :

(a) The witness was employed at Tehelka in 2007 at which point of time he had an assignment for which he was in

Gujarat. Thereafter he was assigned the task to investigate about the communal riots of 2002. The witness was therefore at Ahmedabad where he met different persons of R.S.S., V.H.P. etc. He was given lot of information about the communal riots of 2002 and about Hindutva. It was also informed to him that the strongest organization of V.H.P. is in the Naroda area because of which the massacre at Naroda Patiya could take place. Having learnt the telephone numbers of different persons connected with V.H.P. he telephoned people, he also met many persons by inter-se references.

(b) The witness met A-18 on 14/06/2007, where he was called upon at the office of A-18. The witness introduced himself as a Research Scholar on the subject of Hinduism. The witness has transcript about the conversation with all the three accused and he has recorded all his meetings with the three accused with spy camera, and diary camera which he then used to save those talk in his laptop.

(c) The witness has produced transcript of the recording of the meetings and interviews of all the three accused.

The witness has also reproduced line to line the important aspects according to him of the conversation he had with the three accused. The witness identifies all the three accused with whom he had conversation, whom he had interviewed and on whom he did the 'Sting Operation'. All the *muddamals* including the ear phone, micro chip, battery, tape recorder, both the cameras used for the 'Sting Operation' were produced before the Court. This Court has seen all these *muddamals* produced here. The copies prepared by F.S.L. on D.V.D. & C.D.

have been retained in the record of this case.

(d) CROSS-EXAMINATION OF PW 322 :

(d-1) During the course of the cross-examination, nothing has been elicited which attacked the very heart of the entire prosecution case related to the 'Sting Operation'. On the contrary, it stands confirmed that the 'Sting Operation' was done by this witness, which was for 50 hours or for more than that. The appointment letter of the witness was sought during the cross-examination which was then produced by the witness on demand of the defence, which is on record at Exh.2273, which confirms the case of the prosecution about the 'Sting Operation' having been done by the witness while he was employed with Tehelka. This proves that the PW has not acted with any personal malice for the accused but, has acted as 'PRESS'.

(d-2) The witness has specified and clarified that he has duty to report for the truth which is in the public interest and in the interest of justice. He adds that all that has been recorded is truth. This fact is also supported by the FSL opinion and deposition of PW 323.

(d-3) The witness was crossed on the fact that he assumed a false identity by introducing himself as Shri Piyush Agrawal and thus with the help of falsehood, he has done the 'Sting Operation'.

In the opinion of this Court, this is the age of aggressive and investigative journalism and the pivotal point of

central importance is not the fake identity assumed by the witness, but it is whether the 'Sting Operation' of the three accused and others was done and whether can it be termed to be voluntary, truthful and reliable or not.

(d-4) As has already been discussed about the gestures and place of the 'Sting Operation', it was residence of A-22 at Chhara Nagar for A-21 and for A-18, it was his own office near Galaxy Cinema. There does not seem any compulsion, mistake, misrepresentation or inducement or undue influence applied on anyone of the three accused. They spoke voluntarily. It absolutely seems to be voluntary and it is quite truthful, reliable and dependable. No element has been noticed because of which it can even be doubted that it was not voluntary. It is clear, unambiguous revelation made in fit state of mind. It seems to have been recorded while the accused were free from any element which can create a doubt against its voluntariness, complete free involvement of three accused is too apparent. No doubt is created whatsoever about this central point of consideration for this Court. There is absolutely no contradiction to have highlighted and all the omissions are not material and relevant as well as nothing is related to the three accused of this case.

(d-5) The gist of the revelations by all the three accused in the DVD and CD has been placed in capsule form in the beginning of this topic. Even the relevant part of testimony of PW 322 involving the three accused has also been highlighted herein above, hence the same has been not repeated here. Suffice it to say here that all the three accused gave their interview quite voluntarily and there was no element

of either inducement or any other such hindering elements.

(d-6) It is also notable that the defence only qua A-18 only has been raised stating that A-18 was reading the script in employment of the inducement offered by PW 322 but this defence is found to be totally baseless defence when this Court has viewed the 15 DVDs and the 4 CDs (concerned part for this case). This Court found that A-18 was in full mood to tell all his horrifying deeds on the date of riot. At the cost of repetition, it is to be noted that this Court keenly observed that throughout his interview, he had eye contact with this PW and not even once he was seen to have been reading and then speaking.

(d-7) As far as A-21 and A-22 are concerned, no defence by way of any suggestion has been put forth for them. Hence for them, the 'Sting Operation' and the admissions made therein have remained unchallenged and uncontroverted. The 'Sting Operation' of the remaining two is held to be voluntary and absolutely reliable and deemed to have been admitted during the trial.

(d-8) As far as the revelations are concerned, it clearly involves A-18, A-21 and A-22 as they themselves admit by way of the extra-judicial confession before PW 322 about their involvement in the crime of Naroda Patiya massacre. The confession by the three accused is found to be most dependable, clear, unambiguous and is very clearly conveying that the three accused and the co-accused are perpetrators of charged crimes. It passes with distinction the test of credibility.

(d-9) Moreover, the extra-judicial confession made by the three accused before PW 322 is absolutely clear, cogent and appeared to have been made in normal course without any pressure, inducement etc. and sounds to be absolutely voluntary and reliable. Hence the said extra-judicial confession cannot be discarded and should be given due importance which itself can be the basis of conviction as laid down in AIR 2011 SC 2283. Here, it needs a note that A-18, 21 and 22 are makers of the confession hence, they stand on different footing than, the co-accused to whom also they involve.

(d-10) PW 322 has no malafide and if the DVDs and CDs viewed, he has not prompted or induced any of the accused to confess but, the accused themselves in their natural free flow, have entered into conversation with PW 322 who has not played any other role except to nod his head by expression of one or two words. The confession made by the accused was certainly not for any threat or promise given by PW 322 as it is also not because of any inducement. Hence the extra-judicial confession made by the three accused before PW 322 is most relevant evidence and needs to be considered in a right perspective, keeping in mind the facts and circumstances of the case.

(d-11) By the submission of the defence, this Court is called upon to just ignore the DVD and CD which would be clearly impermissible.

A-18 has throughout the revelation, expressed his then clear intention to damage and destroy properties of Muslims and to do away Muslims four times more in numbers

than the death toll in Godhra Carnage. He has revealed that when he saw Hindu dead bodies at Godhra, there itself he had given challenge on the previous day viz. 27/02/2002 that he would raise the death toll of Muslims at Naroda which would be four times more than at Godhra. He has further stated in the DVD that he has collected 23 firearms during the night. He has also said that his enemies are only two and that is Muslims and Christians. The conversation also reveals that A-37 came at morning, even at 04:00 p.m., there were A-44, A-41 etc. and that he himself has collected the team of 29 to 30 persons on the previous night.

(d-12) The 'Sting Operation' of A-21 is also interesting wherein he reveals that A-18 is lion of Hindus and on his call, entire Chhara Nagar would come out. He states that A-55 was there, A-22 was there, A-18 was there, A-37 has instigated and has assured that, "she is with them", A-37 waited for half and hour to 45 minutes, there was Nepali and another Marathi (both the absconding accused) etc.

(d-13) The interview of A-22 is also quite interesting wherein he makes the confession of having committed rape on a Muslim girl named as Nasimo. A-22 has revealed that more than 2 to 4 rapes must have been committed on that day. He states to have a sense of vengeance on seeing any Muslim. He makes revelation that there were A-16, A-4, Savan Didawala and A-37.

(d-14) As has been held in the judgement reported at **AIR 1968 Supreme Court 147 in the matter of Yousafalli Esmail Nagree v. State of Maharashtra** while holding that

the tape record was an admissible evidence, it must be proved beyond reasonable doubt that the record was not tampered with. In the instant case, the doubt of tampering has absolutely been ruled out by obtaining the certificate of FSL to the effect that the DVD and the CDs produced are not tampered with and are genuine.

This is the age of technology. One cannot shut one's eyes to hard reality that use of technology is very common these days and that when there is even picture along with voice it becomes more reliable as it is said that voice may be manipulated on the Audio Tape but it is technically nearly impossible to manipulate the picture without getting noticed. In the wake of I.T. Act, the electronic magnetic tape devices can be termed as valid documentary evidence and that when there is no reason to disbelieve the VCD and CD produced on record, the same become most reliable.

(e) EFFECTS OF THE EXTRA-JUDICIAL CONFESSION OF THE THREE ACCUSED.

(e-1) Sec.30 of the Indian Evidence Act needs to be held to be in operation in this case as, its ingredients stand satisfied in the facts of the case. The base of Sec.30 is when an accused makes a confession implicating himself that may suggest that the maker of the confession is speaking the truth. It is not likely that the maker of the confessional statement would implicate himself untruly. This is not a weak type of evidence against the maker himself. A-18, 21 and 22 are themselves makers of the confession. Hence, the Court needs to consider the said confession.

As and when it comes to be applied in case of co-accused it is essential to first of all marshal the evidence already emerging against the said accused and that if, the conscience of the Court is satisfied of having sufficient evidence, then, if the accused are tried jointly as are being tried in this case, the confession of the co-accused can certainly be called into aid.

(e-2) The trial is being jointly held against all the 61 accused and that all of them are being tried for the same offence. By way of confession, the three accused have proved presence, involvement and participation of the many other accused as mentioned herein above.

In light of Section 30 of the Indian Evidence Act, since the proved confession is also affecting certain co-accused, the said confession can be taken into consideration even for the co-accused who have been referred as discussed above by the three accused who have made the confession.

(e-3) This Court is conscious that the confession of the co-accused is not a substantial evidence against the co-accused, but it can certainly be used to fortify the prosecution case, if other evidence is available on record. Therefore, it is held that if any other evidence is available against A-1, A-4, A-37, A-41, A-44 and A-55 and deceased Guddu, then, the confession can very well be used against the accused. As has already been discussed while discussing issue No.1 that there is cogent, credible and positive evidence against A-37, A-41, A-44 and A-55, A-18, A-22 to have hatched conspiracy and to have executed or got it executed through co-accused (for A-37), for

the charged offences of race murders etc. The evidence of extra-judicial confession is therefore, held to be corroborating the case of having hatched the criminal conspiracy against all these co-accused. It is quite useful to remember an important part of the Judgement of Hon'ble Apex Court for application of S.30 of Indian Evidence Act in the cited judgment. It is reported at **2002 Law Suit (SC) 826 pronounced in the matter of Mohd. Khalid v. State of West Bengal,** which has been discussed in Chapter-1 of this part.

(e-4) In light of Section 10, it is important that anything said or done by anyone of the conspirator with reference to their common intention after such intention was first entertained by anyone of them is a relevant fact against each of the persons believed to have conspired and it is also for proving the existence of conspiracy.

(e-5) The fact said by A-18 as challenge at Godhra of rising the death toll four times more is obviously after the intention to take revenge with Muslims, hence, this is relevant fact and that was with reference to the common intention. Moreover, as has already been narrated above while noting the gist of the DVD and CD and his act of making the team of many persons at night and collecting 23 revolvers, are all clearly proving the existence of conspiracy and to have hatched the conspiracy and it was then after executed by the accused mentioned in discussion of issue No.1 under the leadership of A-37.

(e-6) Thus, the finding of having hatched the conspiracy, of existence of the conspiracy at that point of time and on that

day, and about the execution of the conspiracy is clearly and strongly fortified by the above points.

(f) FINDING OF PW 322 :-

(f-1) It is therefore, held that A-18, A-21 and A-22 have made extra-judicial confession before PW 322 which has been proved by PW 322 and which can be viewed in CDs and DVDs, which is most reliable and the Court can safely depend on the same.

(f-2) From the revelation of all the three accused, they also involve, proved presence and participation of many other accused in the crime through their extra-judicial confession. These accused are A-37, A-4, A-16, A-55, A-41, A-44, Marathi (not ascertained the exact name of Marathi since in all the three lists viz. live, dead and absconding accused, there are in all four to five Marathis who are charged with the offence) and Nepali (absconding accused). If any other reliable evidence against these accused would be held to be available on the record then the extra-judicial confession of the co-accused, A-18, A-21, A-22 can be used to fortify the prosecution case against them.

(20) PW 312, Exh.- 2201 to 2203 :-

PW-312 is an unarmed Head Constable of Navrangpura Police Station, who was PSO then, who had issued the Muddamal receipt for the C.D. received of the sample voice recording of the three accused. The order from PW-327, which he received to carry out the task is at Exh.2201 whereas the Muddamal Pavti is at Exh.-2202. This C.D. of voice

sample wherein the sample voice of A-18, A-21 and A-22 were recorded, was seized by drawing a Panchnama on 07/04/2010 which was sealed there. This Panchnama is on record vide Exh. 2203.

In the opinion of this Court, the witness and three documents very clearly established proprietary and regularity of the official act done by PW-327 of collecting the C.D. containing sample voice of the three Accused.

(21) PW 323 - Exh.2275, 2276, 2277 (DEFENCE):

(21.1) This witness is a scientist from F.S.L., Jaipur. Along with Dr.Vishwas Bhardwaj and Dr.Mukesh Sharma, this witness has examined all the *muddamal* sent to the F.S.L., Jaipur by the C.B.I. and given the opinion about the recording, C.D., D.V.D., etc. to be genuine and without any tempering. Exh.2275 is a receipt of the C.D. of the voice sample of the three accused. Exh.2276 is the opinion of this scientist to the effect that the conversation of the three accused recorded in C.D. and D.V.D. are of the three accused respectively, as is confirmed upon comparison of the voice and similarity in frequency, intonation pattern, phonetic, etc. with the voice sample C.D. It has been opined that the speakers respectively A-18, A-21 and A-22 are the same whose interviews have been recorded.

(21.2) Defence has sought Exh.2277, which was a letter by PW-327 to the F.S.L., Jaipur with a request to give report comparing the voice recorded in sting operation and recorded in the C.D. of voice sample.

(21.3) During the course of the cross-examination, nothing

has been focused and or proved which can create any doubt in the mind of the Court about the genuineness of the opinion given by F.S.L., Jaipur.

(21.4) The witness also confirmed the opinion having been given for the C.D. and D.V.D. on record vide Exh.2259.

(21.5) It is also clear that Sec.10 of the Indian Evidence Act is based on principle of 'Agency', hence, thing said, done or written while the conspiracy was on-going, is all receivable in evidence and that in the case what A-18, A-21 and A-22 have talked was of before the conspiracy was hatched and during the execution of the conspiracy and there is nothing on record brought by the three accused after the conspiracy was ceased hence, Sec.10 is applicable. As a result, the statement made, anything said or done, etc. shall be admissible against another conspirator.

(22) FINAL FINDING ON STING OPERATION :

While concluding this topic, following points emerged on screen very clear:

(a) The extrajudicial confession of A-18, A-21 and A-22 is held to have been proved voluntary, free from every doubt and it passes test of credibility thoroughly. As such, no corroboration is required to the extrajudicial confession of the kind but, since there are ample corroborations available from the record of the case, the same needs to be recorded here as, finding of the Court.

Oral evidence of PW-312, 314, 320, 322 and 323 r/w. documentary evidence at EXH.2201 to 2203, 2258, 2259, 2213 to 2216, 2273, etc. further viewing it with 15 D.V.Ds. shot by PW-322 and further hearing it from 5 C.Ds. of operation 'Kalank' it is clear and confirm that the extrajudicial confessions can safely be acted upon qua the three accused which are held to be relevant, admissible and safe to convict the three accused on this confession also.

(b) In the facts of the case on hand, the extrajudicial confession given by A-18, A-21 and A-22 have been held to be truthful, voluntary and a genuine confession which is held to be admissible and relevant, free from every doubt and is safe to act upon.

That against the non-maker co-accused, who are being jointly tried with the three accused, whose confessions have been held to be safe to be acted upon, also it cannot be treated as evidence but, if from the evidence otherwise available against the co-accused, which can be marshaled from the record of the case and then, from that if the co-accused are found connected with the crime, then the extra judicial confession has corroborative value. These co-accused are A-1, A-4, A-16, A-20, A-37, A-41, A-44, A-55 and others. At the cost of repetition, be it noted that if the evidence on record is found to be capable enough to point their guilt, then only, the confession of the co-accused viz. of A-18, A-21 and A-22 can be used to corroborate the finding of this Court against the said co-accused.

... X ... X ...

CHAPTER-III : MOBILE CALL DETAILS

PW - 308, 311, 316, 318, 321, 327 in part. Exh.2192 to 2198, 2227, 2241 to 2244, 2319 to 2324, 2330 to 2334, 2340 to 2344, 2349 to 2351, 2362, 2363, 2385 to 2392 :-

(1) PW 318 when read with PW 327, it becomes clear that originally the mobile phone call details of the accused were obtained by PW 318 Shri P.L. Mal, I.O. of Naroda Gam, I.C.R. No.98/02 as some of the accused are common in this case and the case of Naroda Gam. According to the prosecution case, the mobile phone call details were obtained for the mobile numbers used by A-18, A-37, A-62 and A-44. It is also related to land line numbers of A-24, A-20 and for A-62 which, in the case of A-62, is for the land line number, over and above his Mobile number. On requisition by the Investigating Officer of this case i.e. PW 327, Investigating Officer Shri Mal - PW 318 has sent the Mobile phone call details which he has procured during his investigation by copying the C.D. of the phone call details through FSL Gujarat, was received by the Investigating Officer. Thus, the source of knowledge of the Investigating Officer of this case about the telephone numbers as well as about the phone call details is from the Investigating Officer of Naroda Gam Case. PW 311, Shri Gedam is the then PSI who was handed over the task of mobile phone call details analysis, which he did and gave it to Shri Chaudhary the Investigating Officer of this case.

(2) In his deposition at para 20 PW-311, Shri Gedam, the mobile phone call details analyst, has admitted that the name

of the person did not come in the phone call details as at that point of time the name of the mobile phone holder or, say, subscriber of a particular mobile number was not coming in case if the subscriber was of Celforce whereas in case of C.D. of AT&T such names do appear. It has been specifically admitted that in case of mobile number of A-44 which was of the then AT&T company since such facility was available with AT&T, his name was coming in the C.D. itself given by the company whereas, in case of the other accused, which were included in C.D. of Celforce, the names were not coming in the C.D. of call details given by the Celforce. The witness has further admitted that he did detailed analysis of the mobile call details only for the accused whose names and numbers were given to him and that he has not gone to the mobile company to know in specific as to which mobile phone number belongs to whom or was subscribed by which accused.

(3) While reading para 29 of the said witness, it stands clear that except in case of A-44 the mobile phone company has not written the names of any of the subscriber connecting the subscriber(connecting the accused) with a particular telephone number. He voluntarily adds that on the basis of the forwarding letter which he has received from PW 327, he wrote these names for the clarification in the mobile call details analysis he did.

(4) The said forwarding letter is on record at Exh.2362. This letter is by PW 327 to PW 311 requesting him to do the phone call analysis wherein the name of A-18, A-37, A-24, A-20, A-62 and A-44 have been mentioned against the telephone number, which according to the prosecution case, belongs to each of

them.

(4.1) As clarified by this witness, he did the analysis and returned the analysis report along with forwarding letter at Exh.2192. In Exh.2362 and Exh.2192 the mobile phone number, against the name of Shri Kirpalsingh, is written as (9825074044) but as has been clarified at para-7 by PW 311 the number was (9825047044).

(4.2) From the above admissions, it becomes clear that in the mobile phone call details, on the title the name of the accused and the telephone numbers have been written by this witness on the basis of the information given to him in writing by Investigating Officer of this case and not on the basis of any other source.

(5) In the cross-examination of PW 327 at para 261 of his testimony, the Investigating Officer of this case has stated that he has investigated for the names of the subscribers of the telephone numbers mentioned in letter Exh.2192. At para 262, the witness clarifies that his successor Investigating Officer has perhaps investigated about the subscribers of the two land lines mentioned in his letter at Exh.2362 viz. according to the prosecution case, residence phone lines of A-24 and A-20. He thereafter produced on the record the said information collected by his successor Investigating Officer from BSNL vide Exh.2342 for residence land lines of A-24 and of A-20 vide Exh. 2343. In para-265, the witness has admitted that he himself has not investigated for the subscribers of the six numbers mentioned in Exh.2192. He has however clarified that he has sought for the information from the mobile companies, but the

same were not made available to him until he remained as Investigating Officer.

(6) From para-266 onwards, the witness has admitted that as far as the mobile number 9825020333 (number written against the name of A-18 at serial number 1 in letter Exh.2362 by the witness) is concerned, it was revealed during his investigation that the said number was not subscribed by A-18 but the said mobile was being used by office of VHP in the year 2002; the mobile phone was used by the office of VHP which was even used by other persons over and above A-18. In para 269 he has clarified that according to the witness it was revealed during his investigation that on the date of the occurrence, the phone was not with any of the accused of this case.

This creates many reasonable doubts about the mobile phone to have been subscribed and used by A-18 on the date of the occurrence. Hence, benefit of doubt is granted to A-18 qua this point only.

(7) In the testimony of the Investigating Officer of this case Shri Chaudhary, in para 329, he has admitted that he has not recorded statements of the subscribers of the two land line numbers shown against the names of A-24 and A-20. It is further stated that in case of both these land line numbers no documents have been collected from the lady subscribers of the two land lines and no investigation has been made as to who stays at those addresses.

(8) From para 332, it becomes crystal clear that this

Investigating Officer has written the names of the accused in Exh.2362 against the mobile numbers on the basis of the information he received from Shri Mal, PW 318, Investigating Officer of Naroda Gam case. This clarifies that to connect the telephone numbers with the accused this witness has only depended on PW 318. It is admitted that no cross matching and confirmation has been done by this Investigating Officer.

(9) If para 784 of this witness is perused, then it becomes clear that the information about the four mobile phone calls sought by him has been received. The information sent by Vodafone is at Exh.2389. Upon perusal of this documentary evidence, it is clarified that the mobile phone number, which has been mentioned by this witness in his letter at Exh.2362 against the name of A-18, is in the name of one Sunil Sevani and not A-18. The number shown against the name of A-37 was subscribed by BJP and not by A-37 personally. The number of Kirpal Singh, which according to Vodafone is 9825047044, was subscribed by A-62. No further investigation has been done to find out as to the mobile numbers in the name of BJP was in fact used by whom. Hence, in absence of any evidence, it can be held that A-37 was using it on the date of occurrence. Thus, out of the four mobile numbers, the mobile numbers shown against A-18 and A-37 do not stand proved beyond reasonable doubt to have been subscribed by the two accused in the year 2002 and were used on the date of occurrence by the accused.

(10) Exh.2390 is the letter from Idea Cellular wherein the mobile number 9824085556 is shown to have been subscribed and hence can be inferred to have been used by A-44 and A-62

respectively on the date of the occurrence. Thus, out of the four mobile numbers mentioned at Exh.2362, only two of the mobile numbers of A-62 and A-44 stand proved to be of the accused, against whose names the mobile numbers have been shown.

(11) No substance is found in the defence raised by A-24 and A-20 by way of cross examination and oral submission about the land lines having been not proved to have been used by them. Exh.2342 is the record of BSNL for the land line number shown on the name of a family member of A-24. If this documentary evidence is seen the address where the telephone number was working and the address of A-24 which can be traced out from the record of the Court of learned Metropolitan Magistrate while A-24 was arrested is same. Meaning thereby where the address where A-24 is shown to be residing, is the address where the land line is working. In the same way if Exh.2343 is seen, and more particularly internal page 48 and 49 are seen, it is clear that the address mentioned in the record of BSNL is the address of A-20 on record while the A-20 was arrested, which can also be confirmed from the record of the learned Metropolitan Magistrate.

(12) Now therefore, it is clear on record that as far as telephone numbers of A-20, 24, 44 and 62 are concerned, the same are proved to be respectively the mobile number or the land line number, as the case may be, subscribed or used or found to be installed at the residence of the respective accused and that it stands proved beyond all reasonable doubt that in the year 2002 the telephone numbers as mentioned in the letter of PW 327 at Exh.2362, were used or subscribed by the

respective accused as shown against their name.

(13) It is true that these four accused were using or have subscribed the mobile number or the land lines. But upon perusal of the phone call details it seems that :

(a) Exh.2195 is the phone call details of A-24 wherein the analysis is related to mobile numbers of A-18 and A-37 both of whom have been granted benefit of doubt.

(b) Exh.2196 is the phone call details of A-20 wherein the analysis is related to A-37 only.

(c) Exh.2197 is of A-62 wherein also analysis is related to the mobile number of A-37 only.

(d) Exh.2198 is of A-44 wherein no analysis is made hence nothing stands proved.

Considering the above situation the mobile and land line phone call analysis do not prove anything to help the prosecution.

(14) As has been submitted by the learned Advocate Mr. Kikani for A-37 that at Exh.2194, which is the mobile phone call details of telephone number 9825006729, there are discrepancies and apparent contents which create reasonable doubts against the genuineness of the document. He has invited the attention of the court to the internal page 5 wherein, after the time of 16.14 the time of 16.09, 16.11 and 16.13 etc. have been written. This Court is in agreement with

the learned Advocate Mr.Kikani that in the computerized document it is not probable that the time would not be reflected in proper order as time of 16.14 hours can never be before 16.09, 16.11 or 16.13 hours of the said date.

This creates a reasonable doubt about the genuineness of the document and this reasonable doubt is sufficient not to attach any value to the said documentary evidence. Hence, benefit is granted to A-37 only on this count as far as the mentioned mobile number is concerned.

(15) It is true that as a matter of fact, while appreciating the evidences put up before the Court, that of the phone call details, no aid is available to prosecution as on scrutiny, no incriminating material or probability stands revealed of hatching conspiracy as far as the communicating through the mentioned telephone numbers are concerned. Hence, technically A-37, A-18, A-44, A-62, A-24 and A-20 are able to secure benefit of doubt as far as these phone call details are concerned. But, it is notable that in the year 2002, mobile phone was quite popular and was freely used as mode of communication. A-37, A-18, A-62, A-44 etc. have been alleged to be in contact on mobile phone. None of them have stated that they did not have mobile in 2002 and they had no telephonic contact with the co-accused. This fact is a circumstance which can certainly be considered when the hatching of criminal conspiracy stands proved against the accused. Their agreement to do illegal acts cannot be without any communication hence, it is inferred that they have communicated with one another since they belong to the same group, same organization working for 'Hindutva'.

FINDING :

In view of the foregoing discussion, following points stand proved beyond reasonable doubt :

That the mobile phone call details and its analysis does not help and does not prove any part of the prosecution case qua A-18, A-20, A-24, A-37, A-44 and A-62.

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~:: PART - 4 ::~

CHAPTER - I : PANCHNAMAS

1. Introduction :

During the course of investigation, the investigating agency has drawn different kinds of panchnamas. Almost all panchnamas have been dealt with in this Chapter except the panchnamas of Test Identification Parade, wherein different accused were identified by the different witnesses. The T.I.P. have been discussed at Part-2 of the Judgment.

The Investigating Agency has drawn the panchnamas of Test Identification Parade as discussed, the panchnamas to assess damages caused to different victims, the discovery panchnamas, which are over and above certain miscellaneous

panchnamas, the panchnamas of inquest, including inquest panchnamas for two of the deceased accused, are all on the record.

2. Usually, panchnama is a record of what panchas - the public witnesses see and hear. The panch witness is not expected to be able to dictate the panchnama, therefore, the vital test or the admissibility and validity of the panchnama is whether the panchnama was prepared in the presence of respectable, independent public witnesses, the police and in certain cases, in presence of the accused while the accused is in custody and is it record of what panchas saw and heard or not.

When the panchnama is duly found to have been proved by proper and necessary evidence, by examining the panch witnesses, the same needs to be believed in toto. In this case, for certain panchnamas there is nothing on record to believe that the panch witnesses are in any way interested and/or are not respectable and independent and have not offered voluntary help to the investigation. That being so, these panchnamas which are totally proved by the oral evidence of the panch witness and/or of the concerned police officers are held reliable.

3. It is notable that if the testimony of the police officer before whom the panchnamas have been drawn inspires the confidence of the Court, the same can also be believed as it is his official act to draw the panchnamas hence, it can have benefit of presumption of proprietary, if found reliable.

4. Except the hostile panch witness, the panch PWs in the case are found truthful and credible one, whose evidence needs to be read along with the seizure of muddamal at the instance of the accused or otherwise, and observance of necessary procedural formalities.

5. The panchnamas drawn during the investigation in this case can be classified as under.

(A) T.I.P. Panchnamas
(B) Panchnamas of damages
(C) Inquest & Identification panchnamas of victims.
(D) Discovery panchnamas
(E) Inquest panchnamas of the deceased accused.
(F) Miscellaneous panchnamas.

A. T.I.P. Panchnamas :-

For the sake of clarification, it is mentioned here that vide Exhs.236, 240, 246, 249 and 252 different Test Identification Parade Panchnamas were drawn in presence of the Executive Magistrates, viz., PW-34, 35 and 36 for the identification of A-38, A-33, A-53, A-54 and A-56. These T.I.P. panchnamas have been discussed at Part-2 of the judgement, hence repetition is avoided.

B. Panchnamas for Damages :-

COMMON FACTS OF ALMOST ALL THE PANCHNAMAS FOR DAMAGES:

(a) To avoid repetition and for the sake brevity, it is found fitting to mention that all different panchnamas for damages have common facts that the disturbances in the Naroda Patiya started on 28/02/2002 after 10.00 a.m. The violent and unruly mobs entered the Muslim Chawls, they looted the properties of Muslims, caused ransacking of their properties, shattered the properties to pieces, torched houses and Muslim chawls. The mob was having different weapons, which mob was making cries of `cut', `kill' etc. Most of the witnesses whose houses were totally ruined in this riot, are occurrence witnesses. They do not identify the accused but, the gist of the panchnamas shows that their properties have been totally damaged and destroyed, their houses were torched and the flames of fire and blackening of walls because of smoke all around have been noticed. There were rubble and stone pieces in the house of the Muslims, all the household were burnt, grain in the house was spread, the wiring of the house was also semi-burnt, because of the effect of heat the vessels were bent, plasters from the walls were altogether removed, breaking and destroying and destruction in the Muslim houses was common, the complaints of the complainants tally with the panchnamas, most of the panch are persons plying rickshaws, most of them were Hindu Panch who have been declared hostile except the exceptional cases. During the course of cross-examination it was suggested to the hostile panch witnesses by the prosecution that they were residing in Naroda Patiya area, they knew about the incident of riot on that day etc. In most of the cases they have admitted their signatures in the panchnamas but, have not admitted the procedure mentioned in the panchnamas to have been adopted by the concerned police officers.

(b) In the humble opinion of this Court, the suggestions put forth by the prosecution to the hostile witnesses is making the case clear as to for what reason the panch witnesses have shifted their stand and that the said suggestions are full of probabilities and hard realities of life.

(c) Hostile Witnesses :- It is settled position of law that in case of hostile witness, entire evidence should not be discarded or excluded or rendered unworthy of consideration. The credit worthy part can be taken into consideration and in certain cases this can infer certain facts. In the case on the hands, the reasons for the Hindu panchas to shift from their version can be very well understood hence, it is inferred that, the hostile panch witnesses are not speaking truth and the truth lies in the contents of the panchnama, hence, all such panchnamas of damages need not be doubted.

(d) The citation at Sr.No.**14** of learned Special P.P. **Head Note-A** of the judgment guides that even the evidence of Hostile Witness can be accepted to the extent the version is found dependable. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution choose to treat him as hostile and cross-examine him. The evidence of such witness cannot be treated as effaced or washed off the record altogether, but, the same can be accepted to the extent to which their version is found to be dependable on a careful scrutiny thereof.

(e) This Court is therefore, inclined to believe that the panchnamas were drawn properly in presence of the independent and respectable public witnesses, as through the

panchnamas what comes on the record is damages caused to Muslims dwelling houses, shops, carts, cabins, etc. This damages are obviously of lacs of rupees.

(f) There is no need of painting any wrong picture for the police on the aspect of damages and therefore the panchnamas of damages are found to be relevant, admissible, drawn properly and legally. It is true that the record of the previous investigation is already held to be not dependable or not reliable but, it is only as far as recording of the statements of the PW is concerned. Preparation of this record through panchnamas is formal, not involving accused and mainly related to loss of property. The police, obviously, was not required to not write anything which in fact, exists as, like the statement of the PW the panchnamas are not going to involve any of the accused hence, no scheming was required here.

(g) It cannot go out of mind that drawing the panchnama is an official act and the presumption of proprietary goes along with the genuineness of the contents of the panchnama if it inspires the confidence of Court. Through cross-examination of the witnesses, no material whatsoever has been brought on record which doubt the genuineness, legality, validity, admissibility and relevancy of the panchnamas.

(h) It is settled position of law that the concerned police officer in whose presence the panchnamas have been drawn can also prove the panchnamas. The police officer being public servant, except proved otherwise, it can safely be presumed that the work like drawing panchnamas which is in no way including or implicating any of the accused, might have been

drawn properly. It is therefore, held that all these panchnamas are admissible in evidence, valid and are drawn properly.

(i) The gist of the panchnamas of damages has been put hereunder.

(1) Exh.2046 :-

It is the panchnama drawn for the damages at the house of PW 2. PW 3 is a common panch witness for both the above panchnamas who was declared hostile. However, PW 297 the concerned police officer has supported and proved the contents of panchnama at Exh.2046. Vide this panchnama the damages caused to the shop of PW-2 below his house named as 'Gulabsha Kirana Stores' and the damages due to looting, theft and fire in the house of PW-2 at Imambibi-Ni-Chali, Opposite Nurani Masjid, has been narrated.

PW-2 through his deposition, has supported the contents of the panchnama, which are also reflected in the complaint of the PW-2, the FIR of which is at Exh.294. This panchnama seems to be genuine and held to have been proved as true and genuine.

(2) Exh.2047:-

This is the panchnama of the house of Taufiqmiya Akbarmiya Sumra, PW 40 who is complainant of I-C.R.No. 129/02 for the damages at his residence at Imambibi-Ni-chawl Opposite Nurani Masjid. The witness was brought from the relief camp to draw the panchnama, the panchnama reflects

tremendous loss of property, torching the house of the witness and shattering the household to pieces. The entire house was burnt. The F.I.R. is at Exh.297 – Taufiqmiya has supported the panchnama. It stands proved

(a) Father of the said Taufiqmiya had passed away. Taufiqmiya has been examined as PW-40 in whose presence the panchnama of the damages of the house of his father at another Muslim Chawl known as Hukamsinh's Chawl was also drawn.

(b) The witness has supported through his version the entire contents of the panchnama, even the concerned police officer has also supported.

(c) PW-2 was cross-examined on the aspect that though the witness was running his stores known as 'Gulabsha Kirana Stores' for 30 years, why has he not obtained the registration under Bombay Shops and Establishments Act.

It was submitted by the defence that on account of the fact elicited during the course of the cross-examination, it becomes doubtful that this witness was ever inhabitant of the Imambibi-Ni-Chawl or not as he admittedly does not possess the certificate under Bombay Shops and Establishments Act.

(d) This Court is of the opinion that if the person is running his shop at a very very small level as good as a house shop, he might not have registered himself under the Bombay Shops and Establishments Act. But merely that is not sufficient to doubt about his residence or shop to have been in Muslim Chawl –

Imambibi-Ni-Chawl. The business at a very small scale may be there, even without registration under the Bombay Shops and Establishment Act. The panchnamas stand proved.

(3) Exh.143 :-

This is the panchnama of the house of PW-1 Memood Abbasbhai who is a complainant of I-C.R.No.111/02. The house of this witness was entirely burnt. His complaint is at Exh.141 and FIR is at Exh.292. The complainant, PW has proved the fact of damages at his house in his deposition hence the panchnama can safely be believed. Moreover, PW 276 is the concerned officer who has proved the panchnama drawn before him corroborated by the complainant himself.

(4) Exh.162 :-

The panch witness is PW-8 who has proved the panchnama of the house of PW-54, who is the complainant of I-C.R.No.163/02. Even panchnama of the damages has been supported by PW-284 before whom the panchnama was drawn. The damages caused in the residence of PW-54 have been proved. PW 54 has also supported the panchnama which can be believed.

(5) Exh.164 :-

This panchnama is a panchnama of residence of complainant of I-C.R.No.180/02, Shri Mehmoodbhai had died. This panchnama has been proved by panch witness PW 9 and by PW-307 as, Shri Chauhan before whom the panchnama was

drawn, had also passed away. The F.I.R. is at Exh.306. No reasonable doubt is poised against the credibility of the panchnama from the cross-examination. The panchnama stands proved.

(6) Exh.384 (by defence) :-

This is the panchnama of the damages in the house of PW-45 Sufiabanu Yakubbhai, who is complainant of I-C.R.No. 161/02. The house of Sufiabanu was at Imambibi's chawl which was shown to police by one Abbasbhai. PW-4 is the panch witness who has admitted that he and another panch (PW-5) were called. He also identified his signature. The PW 5 is a hostile witness, but since another panch and the concerned police officer supports, no doubt is left out in the mind of the Court about the credibility of the panchnama. The loss or damages caused in the house of Sufiabanu has been proved by the complainant also. The panchnama stands proved.

(7) Exh.2038 :-

As far as the panchnama at Exh.2038 is concerned, it is about damages in the house of one deceased Kasamali at Imambibi's Chawl which all have been corroborated by the deposition of the police officer. The complaint is at I-C.R.No. 162/02. The panchnama is held to have been proved.

(8 & 9) Exh.929 & Exh.931 :-

PW-138 is the common panch for both these panchnamas.

These panchnamas are respectively drawn in I-C.R.No. 187/02 and I-C.R.No.177/02 to bring on record the position at the site of offence, which are respectively of residence of Abdul Karim Saiyad Rasul Shaikh who has been examined as PW-61 and Hasan Abubakkar Saiyad who had died. As per the record, this Hasan Abubakkar had lost four of his family members including a young son Maiyuddin aged 18 years who lost his life as was burnt alive. The FIR of both the said complainants are on record. Both the panchnamas have held to have been proved on record.

(10 to 12) Exh.1345, 1346, 1347 :-

PW 195 and PW 31 are the two panch witnesses for all the three panchnamas.

PW 195 proves the three panchnamas of the damages in the dwelling houses of three Muslim witnesses. This witness is also identifying signature of PW 31 in all three panchnamas who is the second panch witness. PW 31 is that second panch witness who was a hostile panch witness who identifies his signature. In light of the identification of the signature in the three panchnamas by PW 31 and the testimony of the second panch witness PW 195, all three panchnamas are worthy to be believed to be genuinely drawn. No doubt is left out in the mind of the Court about proprietary of the official act of drawing the panchnama.

All the three are the panchnamas of damages respectively of the complainant of I-C.R.No.181/02, 182/02 and 183/02 who all have been examined by the prosecution as PW-57, 73 and 58

who are Sairabanu, Basubhai and Munir Shah. The panchnama shows damages to the houses of the respective victims as is also proved by the complainants. The three panchnamas stand proved and held credible.

(13 & 14) Exh.1455 and 1479 :-

PW 208 being the panch witness validly proves the panchnama Exh.1455.

The panchnama of damages to the house of Kamrunissa and Shabana who have been examined as PW-56 and PW-209 respectively of which Kamrunisa is the complainant of I-C.R. No.164/02. The PWs have supported the contents of the panchnama. These panchnamas have been proved and held credible.

(15) Exh.1531 (by defence) :-

PW 213 has suffered damages at his shop. This panchnama is for that damages.

Vide Exh.1532, a Judgement in Sessions Case of brother judge has been placed by defence on record to exhibit that PW-213 was accused in the said matter. But, as a matter of fact, this judgement has been discussed at the relevant part in the judgement and when PW-213 has been acquitted by giving benefit of doubt, no significance is left out by exhibiting any part from the judgement.

(16) Exh.1563 :-

This is panchnama of the damages at the house of PW-55 who is complainant of I-C.R.No.176/02. The panchnama and its contents are proved by the complainant and the concerned police officer. No doubt is created for the proprietary of the fact of the police officer. It stands proved. It is held credble.

(17) Exh.1856 :-

This is panchnama of the damages to the house of one deceased, Allarakha Gulam Mohammad Malek who was residing in Badarsinh Chawl and who was complainant of I-C.R. No.179/02. The PW 6 and 7 are hostile panchs. The panchnama stands proved by the police officer concerned before whom it was drawn. No doubt is created in the mind of the Court about the proprietary of the official act. It stands proved. It is held credible.

(18 & 19) Exh.2036 & 2037 :-

Exh.2036 is the panchnama of the house of PW-38 Ummedhasan Kallubhai Qureshi who is complainant of I-C.R. No.117/02. PW 38 has supported the panchnama. The concerned police officer has also supported the panchnama.

Exh.2037 is the panchnama of the house of Akbarmiya Jummedmiya, who had died and who was complainant of I-C.R. No.130/02. The police officer PW 296 has proved the panchnama. The panchnamas are credible.

(20 & 21) Exh.2039 & 2040 :-

Exh.2039 is the panchnama of damages. PW 10 is hostile panch witness of this panchnama who admits his signature on the panchnama which helps proving proprietary of the panchnama. No doubt is validly created against the truthfulness of the contents.

PW 11 and PW 12 are the two hostile panch witnesses of panchnama of damages at Exh.2040, both the panch witnesses identify and admit their signature on the panchnama which helps proving the credibility of the panchnama. Needless to add that both the concerned police officers have supported the panchnama. It also stands proved.

Both these are panchnamas showing damages to complainant of I-C.R.No.184/02 and 185/02 respectively who are Munirkhan Jahangirkhan and Sarmuddin Khwaja Hussain Shaikh. Munirkhan has already settled at U.P. as has emerged from the record whereas Sarmuddin has been examined as PW-59 who has supported the panchnama. There is nothing on record to doubt the proprietary of the panchnama. Both the panchnama stands proved and held credible.

(22) Exh.2048 :-

This is the panchnama for damages to Allauddin Adam Mansuri who has been examined as PW-41 and who is complainant of I-C.R.No.153/02. The complainant PW 41 and PW 297, the concerned police officer have proved the panchnama and held credible.

(23) Exh.950 :-

This is the panchnama of the damages caused to two rickshaws having R.T.O. No.GRS-8 and GJ-1-VV-4487 and the house of PW-140. PW 140 and the concerned police officer have proved the panchnama and held credible.

(24 to 28) Exh.952, 1036, 1055, 1082 and 1083 (By Defence) :-

All these are panchnamas brought on record by the defence respectively for damage to rickshaw, damage to residence of PW-149, 143, damage to house and shop of PW-156 and looting having been committed in the house of PW-156. No doubt is created against any part of the prosecution case because of these panchnamas.

(29) Exh.1151 :-

This is the panchnama exhibiting damages having been caused to residence of PW-162 who has proved the contents of the panchnama. It is held reliable and credible as stands proved.

(30) Mark-134/65 :-

This is the panchnama of the site of the offence, meaning thereby panchnama for showing damages caused to the residence of PW-60. PW 60 has deposed about the damages caused to him. PW 13 and PW 14 are both hostile panch witnesses, but that does not falsify the testimony of PW-60. The

testimony of PW-60 proves the damages.

Common Conclusion For All The Panchnamas Of Damages :

These panchnamas of damages and testimonies of number of PW on damages, at least caused to the houses of 68 PWs, shops, business places, vehicles etc. if appreciated in true spirit, the panchnamas are valid, admissible and are credible one which proves the case of the prosecution.

Common Finding Of All 29 Panchnamas For Damages :-

The damages suffered by the Muslims to their properties on 28/02/2002, at the Muslim Chawls is of very huge amount while reading it with the PW for damages, loss damage analysis forms, the amount of loss and damages goes to lacs of rupees. These panchnamas read with testimonies of respective PWs, police officer, answer the point for determination on Sec.427, 435, 436 and 440, etc. which are offences of mischief, in the affirmative (details on it is at Part-7 of the judgment). These panchnamas prove enormous damages to have been sustained by the Muslim inhabitants of Muslim chawls. Many Muslim chawls, Muslim dwelling houses, shops, cart, cabins have been totally reduced to ashes, have been burnt all together, totally destroyed, damaged, scattered to pieces and ruined in toto. The complaints filed by the complainants, their oral testimony, panchnama itself and version of the police officer in whose presence it was drawn tally with one another and that proves the prosecution case for the offences against property, of mischief, etc. in its entirety.

C. Inquest panchnamas and their panch PWs. :

[I] All the inquest panchnamas have been discussed in detail herein after in Chapter-2 of this part, with its co-relation with other relevant documents to establish homicidal death of all the said deceased. Here the panchnamas and their panch witnesses have been discussed. All these inquest panchnamas are of different dead bodies which were found lying either in the houses at Jawan Nagar area or the Jawan Nagar hutments and or were brought to the P.M. Room of respective hospitals, who died during their treatment. The panchnamas have been proved by the respective panch witnesses and concerned police officers. Some of the inquest panchnamas are of identified dead bodies and some of them are of unidentified dead bodies. All the panchnamas have been drawn by the assignee officers of the first I.O.

(1 to 4) Exh.192, 194, 203 and 205 (Inquest Panchnama):

PW 19, 20, 23 and 24 are all respective panch witnesses of the mentioned panchnamas which all are inquest panchnamas of different dead bodies drawn by first I.O. or his assignee officers.

(5 to 8) Exh.207, 210, 212 and 214 (Inquest Panchnama):

PW 25, 26, 27 and 28 are respective panch witnesses of the panchnamas who have proved the panchnamas and that the

said panchnamas have also been proved by the police officers in whose presence the panchnamas were drawn.

(9 to 11) Exh.221, 224 and 232 (Inquest Panchnama):

PW 30, 32 and 33 are respective panch PWs who have proved the inquest panchnamas.

(12) Exh.402 (Inquest Panchnama):

It has been brought on record by the defence during the cross-examination of PW 48.

(13) Exh.394, 406 and 662 (Inquest Panchnama):

Exh.662 is the entire inquest panchnama of 58 dead bodies near the water tank known as khancha whereas Exh.394 and 406 are also Exhibits given to some parts of Exh.662 before the entire inquest was given the Exhibit. These Exhibit No.394 and 406 were given at the instance of the defence.

PW 21 and 22 are hostile panch witnesses who have proved the occurrence, horrible situation at about 06:00 p.m. at the site of the offence and through this witnesses the prosecution has also proved the site of the offence.

(14) Exh.937 and 357 (Inquest Panchnama):

Exh.937 is the original inquest panchnama, PW 139 is the panch witness who proves the inquest. During the course of the cross-examination of PW 43, the carbon copy of Exh.937 was

taken on record by the defence which was given Exh.357, thus both the Exhibits are of one and the same document.

(15 to 20) Exh.1454, 1333, 2021, 2062, 2064 and 2075 (Inquest Panchnama) :

PW 208 is the panch witness who validly proves the inquest panchnama, Exh.1454.

This inquest panchnama, Exh.1333 has been exhibited by consent of all the parties on record viz. by admission.

The inquest panchnama, Exh.2021 of Mohammad Shafiq Adam Shaikh has been brought on record by defence.

It is the inquest panchnama, Exh.2062 of Sofiyabanu brought on record by consent of defence.

Exh.2064 and 2075 are the inquest panchnamas brought on record by consent of defence.

(II) Following are the identification panchnamas by which different deceased had been identified.

(1) Exh.219 :

Through this identification panchnama dead bodies of three women viz. Lalbi, Jadi Khala and Mumtaz were identified by one Jabbar. This identification was done at Musa Suha Graveyard. The panch witness is PW 29.

(2) Exh.1303 :

This panchnama is also identification panchnama of one Moin Khan drawn at P.M. Room of Civil Hospital. PW 191 is the panch witness who proves the document.

(3) Exh.1349 :

PW 18 is the hostile panch whose demeanour recorded during his testimony itself is sufficient to prove that the witness is a liar of the highest degree. This is drawn at the P.M. Room of Civil Hospital.

(4) Exh.2041 :

It is also identification panchnama of Zarinabanu and Nasimbanu drawn at Kalindhari Graveyard wherein Zarinabanu and Nasimbanu was identified

In all 20 inquest panchnamas and 04 identification panchnamas were drawn.

(III) <u>Common Conclusion For All Inquests</u> :

(a) All these panchnamas in this part have been drawn by Naroda Police which shows that either the person died in the occurrence at the site or, after sustaining fatal injuries died during treatment. In every panchnama, there is description of the communal riot, death on account of burn injuries and it was death during 28/02/2002 to 01/03/2002 or so. These all, co-relate the death caused in the communal riot at Patiya. These

all deaths are apparently homicidal deaths, caused with intention and knowledge as discussed under the title of 96 murders at Part-7 of the judgment. These are held to be murders.

(b) Almost all Inquest panchnamas have been legally and validly proved. It is needless to add that all of them are most relevant to the case and are admissible in evidence. For some of the dead bodies the panch witnesses have admitted that it was difficult to make out whether the dead body is of Muslim person or a Hindu person, but in case of identified dead bodies such question did never arise like in case of deceased Mehboob it was ascertained whether he was Muslim or not. It is also notable that when there is no complaint of death of Hindu except of Ranjitsinh, it is clear that the dead bodies are of Muslims. The death toll of Muslims in the Patiya had gone to 96.

(c) It is common for all the Inquest panchnamas that in all of them the cause of the death is noted to be the injuries sustained in the communal riots of 28/02/2002 and the acts and omissions of the violent mobs to torch the houses where since the victim was burnt, he had to be treated. It is also clear that during the treatment, they succumbed to the injuries.

(d) The dead bodies, whether known or unknown, were found from different places of Naroda Patiya area. All of them had sustained burn injuries, who were killed during the communal riot.

D. <u>Discovery Panchnamas</u> :

As has been held under the discussion of discovery and recovery when the willingness and preparation of preliminary panchnama and the statements made by the accused, are without any manner of doubt and when finally recovery of the concealed weapons from the places shown by the accused is made, the discovery becomes material evidence through proper panchnama, which itself is sufficient to connect the accused with the crime. **(Citation of P.P. at Sr.No.14)**.

(1) All the Discovery Panchnamas discussed hereinbelow have been drawn by the concerned police officers, who himself or for and on his behalf another police officer, has deposed before the Court supporting the panchnamas and proving them to be genuine and correct. All the discovery panchnamas satisfy the requisites laid down in Section 27 of the Indian Evidence Act and in all these cases the respective accused was in custody as is clear on record, the respective accused has given voluntary disclosure while he was in custody before the two independent public witnesses about his desire to reveal something related to the crime. To establish the genuinity of the fact of disclosure, the discovery made at the instance of the accused is on record. To establish genuinity of the fact of disclosure, the discovery made at the instance of the accused is on record. The fact was then discovered at the instance of the accused that the accused has concealed the weapon used by him in the crime. Under Section 27 of Indian Evidence Act, such information is admissible and that the disclosure confessional statement is admissible since found reliable in all the cases of discovery.

(2) Even if the panchas do not support the discovery panchnamas, the prosecution case cannot be doubted as the said fact has been proved by the concerned police officer whose evidence can safely be accepted when it is also supported by the recovery as result of the disclosure of the accused.

(3) There is no principle of law that without testimony of the independent PW, the testimony of the police officer cannot be believed. In these cases, discovery proves disclosure.

(4) The ground realities cannot be lost sight of that, in these cases, normally, barring the exception Hindu panchs have not supported the prosecution case, most of the panch PWs have turned hostile, but, that cannot stop from believing the case of the prosecution which, is otherwise found to be reliable when the testimony of the police officer who at the instance of accused has recovered the material object, is convincing in this case. The articles were recovered on the strength of disclosure statements made by the respective accused.

(5) In the humble opinion of this Court, all those police officers who have recovered different materials at the instance of the accused, have been found reliable and the discovery panchnamas are proved satisfactorily, validly and lawfully drawn. All the same are therefore held to be relevant and admissible.

(6) In the case when the discovery was from public place, the submission has been made that such discovery should not be believed as it is even after two years, like in case of A-41.

(7) In the opinion of this Court when the police officer proves the discovery to be genuine and when it is seen to have been proved genuine beyond reasonable doubt and when the site is such which was within special knowledge and control of the accused and none else the submission fails. It is clear that the police was not knowing about the fact discovered before the accused voluntarily disclosed the same.

(8) This Court does not find any material either in cross-examination or through the Further Statement by which it can be believed that because the place was outside the house of the accused, the discovery cannot be believed. It is very much probable that the mentality of the accused could be that to take care of the things without very much taking in the personal reach or possession so as to see that he can even disclaim his possession. But in any case, since the accused has shown the place where it was hidden, it is clear that the material discovered was within the conscious possession of the accused.

(9) The procedure adopted by the police officer of preparing the preliminary panchnama and then going to the site and on the strength of the disclosure statement of the accused to seize the weapon shown by the accused are all strengthening the presumption of proprietary of the entire process and it seems quite genuine.

(10) This Court is of the firm view that the discovery of the material used in the crime and the fact disclosed are all relevant, clearly linking the accused with the crime, it is quite probable also. The entire panchnama is an admissible piece of

evidence.

1. Exh.875 – Discovery Panchnama of A-22 :-

(a) Exh.875 is the discovery panchnama of A-22. PW-133 is the panch who has strongly supported the prosecution case. He was confronted on the aspect that there was availability of another person as panch as against the witness who was called upon from a far place. This witness has proved the discovery panchnama to be genuine, correct and lawful. This witness has identified A-22 and has proved existence of all the ingredients of Section 27. He also proved adoption of proper procedure by the concerned police officer wherein the witness has accompanied the accused, who took the police and the panchas at his house and between his house and that of his neighbour's house he discovered the sword used by him in the crime from the unoccupied and unused street near his house.

(b) It is submitted that the police has not recovered any documentary evidence as a proof that A-22 was residing at that particular house. But, in the opinion of this Court what is important is whether A-22 made a disclosure statement and at his instance whether the sword was recovered or not. The reply to both these questions are in affirmative and that the panch witness has categorically stated that A-22 took them to the site and has discovered the sword from the earth.

(c) The usual defence that the witness is giving his testimony at the instance of police or was tutored by the police, is not found impressive.

(d) The panch is found satisfactory and truthful and that

having proper corroboration from the police officer and noting the fact that the fact was discovered at the instance of A-22 and on account of participation of A-22 the sword was produced by A-22 which was seized by the investigating agency. This is clearly linking A-22 with the crime.

Finding of Exh.875- Discovery Panchnama of A-22 :

(a) A-22 has taken out sword which was used by him in commission of crime through the valid, lawful and admissible discovery panchnama. This links A-22 with the crime.

2. Exh. 1494 – Discovery Panchnama of A-44 :-

(a) This is discovery panchnama. A-44 has discovered the sword concealed by him and during the investigation the same was seized by the police officer. A-44 took the public independent witnesses - panchas and the police officers to his house and has taken out the sword and produced the same.

(b) PW-210, the panch witness was cross-examined at length who, during his deposition, could not identify A-44. But, in the opinion of this Court, it is not important. What is important is whether the requisite of Section 27 are satisfied or not. If the entire process is perused, it is clear that all the requisites as discussed above of Section 27 of Indian Evidence Act, stand satisfied.

(c) The panch has admitted that he has not dictated the panchnama, the sword shown to the panchas and identified by the panchas is suggested to be available in the market.

(d) It is never expected that the panchas would dictate. The panchas gives their testimony on what they see and hear and not of what they dictate. Whether the sword is available in the market or not is not an issue. It may be available, but, then merely that fact does not create any reasonable doubt against the credibility of the panchnama. This panchnama has also been supported by the police officer.

(e) Vide Exh.1497, the FSL report of the sword was sought where it was noticed by the FSL that the blood on the sword was insufficient. In the peculiar facts and circumstances of the case, when the panchnamas are drawn after so many months of the occurrence, it cannot be hoped that there would be sufficient blood there and even if the blood would be there since there are numerous murders, whether the blood was there or not is not important. This panchnama is also held to have been properly proved and it is admissible piece of evidence. This evidence is linking the accused with the crime.

Findings of Exh.1494 – Discovery Panchnama of A-44 :

(a) The discovery of panchnama, Exh.1494 is satisfactorily, validly and lawfully proved which undoubtedly links the accused with the crime.

3. Exh.1834- Discovery Panchnama of A-41 :-

(a) PW 211 is the panch witness who admits that he was called upon by the Crime Branch on 25/08/2004 at about 04:00 p.m. and that the signatures shown to him from the panchnama is admitted by him to be his own signature.

(b) It is known that people at times tends to resile from their version and that more particularly, the panch witnesses would easily shift their loyalty. It is therefore, now clear that if from the version of the police officer, the confidence of the Court inspires in the proprietary of the official act of drawing the panchnama then the same can be safely acted upon. In the facts and circumstances of the case, this Court is convinced that the discovery panchnama has been drawn appropriately and there is nothing to doubt the genuinity of the panchnama.

(c) This is a discovery panchnama by which sword was recovered from A-41. Though the panch witness is hostile, looking to the proper adoption of the procedure and noting the fact that the weapon has been recovered in a due process of law based on voluntary disclosure of the accused and is linking the accused with the crime, which is also duly corroborated by the concerned police officer.

Findings of Exh.1834- Discovery Panchnama of A-41:

(a) The discovery panchnama Exh.1834 links the A-41 with the crime which is valid, credible and admissible, panchnama through which, sword of A-41 has been discovered.

4 & 5. Exh.2130 & Exh.2129 – Discovery Panchnamas from deceased Guddu and Jay Bhavani.

(a) Both these discovery panchnamas have been discussed at an appropriate place. The panchnamas are respectively for discovery of scythe by deceased Guddu and discovery of 5 Litre

container of kerosene from deceased Jay Bhavani, which both also link both the accused with the crime as both the panchnamas are credible, relevant and admissible.

Findings of Exh.2130 & Exh.2129 –Discovery Panchnamas from deceased Guddu and Jay Bhavani.:

(a) These panchnamas link deceased Guddu and deceased Jay Bhavani with crime as, the discoveries are results of the disclosure of the respective deceased accused.

(E) <u>Inquest panchnamas of deceased accused</u> :-

1 & 2. Exh.2069 and Exh.2070 :-

These are the two inquest panchnamas of the deceased accused Gulab Kalubhai Vanzara and Dipak Laljibhai Koli who have been shown in the charge as deceased accused.

(F) <u>Miscellaneous Panchnamas</u> :-

1. Exh.177 :-

Vide this panchnama panch PW-16 and concerned police officer PW-276 have deposed on recovering ornaments from one dead body of unknown woman. The ornaments were ring, nose ring and ear ring etc.

Since the dead body is of unknown woman sent from Naroda Police Station, even this panchnama links the death with the crime.

2. Exh.888 (by defence) :-

This is the panchnama drawn during the investigation of I-C.R.No.238/02. It is the panchnama of the damages as well as panchnama of recovery of ashes and controlled earth from the place of offence.

Though PW-15, the panch has been hostile, he admits his signature and secondly this is since taken on record by defence, it is only needed to note that this panchnama proves the damages suffered by Hussainabanu (PW 135) at her house on account of the riots. This panchnama therefore, proves the damages sustained by PW 135 and is supporting the prosecution case to an extent that during the investigation of crime (connecting A-38 with the crimes) the ashes and earth were collected. It is different that it was after very long time from the date of offence. Hence, no purpose would be served. It would not be even mere formality.

3. Exh.1228 :-

This is the panchnama of recovering the VCD prepared by the I.O. No.2 Shri P.N.Barot, PW-178, from the Videographer PW-215. This VCD is exhibiting the position of the site of offence viz. Muslim chawls and others on 11/03/2002.

This panchnama is a credible panchnama as there is nothing to doubt the procedure adopted and/or the contents have not been challenged in any manner and that since the sealed VCD itself was on record, no doubt is created in the mind of the Court against the panchnama.

In fact, this V.C.D. is clearly exhibiting the position at the site of the offence as, everything was blackened due to flame, all properties there, were destroyed, ruined and were in ransacked position.

4. Exh.1556 :-

(a) PW 216 is the panch of panchnama Exh.1556. This panch has supported the prosecution case, he deposed to have visited all 18 to 19 Muslim chawls which according to him were burnt, the dwelling houses were ransacked, he has seen water tank and the room below the water tank where about 11 shops were situated, he narrates the topography. This witness is credible who proves the panchnama which becomes admissible in evidence.

(b) Exh.1556 is an additional panchnama of the site of the offence, where the site was shown by complainant PW 262. The contents of the panchnama has been proved by the panch and the police officers.

(c) Moreover, as stands revealed PW-262 the complainant has shown the site of the offence to the I.O.No.2 and this is the additional panchnama of the site of offence. This panchnama is supported by the panch witness. This additional panchnama is dated 09/03/2002. In this panchnama, the place of the offence has been shown by complainant P.S.I. Shri V.K.Solanki. The place of the offence according to the complainant, was opposite Nurani Masjid. In the description Khwaja Floor Factory at the entry point of one of the Muslim chawl has been referred, Hussain-Ni-Chali, dwelling houses in the Muslim chalws

opposite ST Workshop, the wall of ST Workshop, the wall of SRP Quarters, the SRP Quarters to have been situated on southern side, fencing of the SRP Quarters, Muslim dwelling houses near *khancha*, situation of different timber marks, godown, Jayveer complex etc etc. have all been narrated which tallies with the version of victims before the Court. As is contended in the panchnama the road of the ST Workshop was about 15 feet, Hussain Nagar has several chawls, there are continuously chawls at least upto 18.

(d) After nine lanes, there comes shops and buildings, thereafter another chawl comes, then comes public lavatory, thereafter chawl No.13 & 14 came upto which the houses of Muslims were situated.

(e) At Chawl No.15, there was house of Jay Bhavani (this house is in the last lane of Jawan Nagar) and Dalpat adjoining to each other; thereafter chawl No.16, 17 & 18 came; thereafter there was godown near the house of Bhavani; thereafter there was a big water tank wherein there was room on the ground floor and the water tank was constructed on the pillars. There were about 11 shops. Behind shop No.11, the water tank was situated. All the shops were having opening towards the workshop. Then came chawl No.19 from where Gopinath Society began. The Gokul Society was under construction which had only four houses; thereafter on eastern side, there was a huge ground near the way. On the ground S.R.P. quarters were situated from which ingress and egress was possible. Near Jawan Nagar chawl No.1, there was 20 feet long wall which seemed to have been then recently demolished (Jawan Nagar Wall).

(f) If the panchnama of the site position is understood, it is clear that the situation of the Muslim chawls have not been much changed and that the description in the panchnama is tallying with the VCD. The VCD as has already been discussed, is showing numerous burnt houses and burnt Muslim chawls.

(g) This panchnama proves the position of the site on 11/03/2002 and is reliable document. The lacuna in this panchnama is that, the site of Nurani Masjid should have been included in the site of offence but, it has not been included.

5. Exh.2071 (by defence) :-

Through this panchnama, the blood stained clothes of deceased Mohammad Safi Adam Shaikh were recovered by the police.

6. Exh.1868 (Connects A-38) :-

PW-17 & 194 are the panch witnesses. Through this panchnama mobile of Motorola company has been recovered by PW-277. This panchnama has been supported by PW-135 and other prosecution witnesses like PW-245 and police officer PW-277. PW-245 went to Commissioner's office to deposit the Mobile.

(a) PW-17 & 194 are the two panch witnesses. PW-17 goes to the extent that he does not identify the signature in the panchnama. The summons of the witness vide Exh.185 and driving license of the witness vide Exh.186 have been brought

on record by the defence.

(b) The witness admits that the address where the summons was served, is his address and the summons has been received by him. It is notable that the witness raises a claim that his surname is not Chhelani but is Kevlani.

(c) Basing upon this, the defence has submitted that the prosecution has not examined a right witness.

(d) Upon analysis of everything it very clearly emerged on record that the witness has obtained the Camouflage of Kevlani, his address is same on which the summons has been served, he has taken the service of the summons without any objection or endorsement or without even clarifying that he is not Chhelani.

(e) In the reply in response to the question raised by the Court, the witness admits that he knows Gujarati right from his birth, he has studied upto Std.VI and he has read over the oath written in Gujarati before starting his deposition, which oath was placed near the witness box.

(f) This all, if collectively seen, it is clear that the witness is none else but Shantilal Budermal Chhelani and as the defence has devised to project him as Kevlani this is clearly because the accused as well as witness both belong to Sindhi community and the purpose of retracting from the original stand is very clear.

(g) Suffice it to say that as far as the surname is concerned,

the witness is telling lies. He is apparently trying to help or oblige the accused. He is not credible witness. He has not acted naturally. His version of change in surname cannot be accepted since does not sound to be credible at all.

(h) The witness has produced his driving license and PAN card. The address on the driving license is not the address on which summons was served which even according to him is his address. The address on the PAN card could not be seen as only one part of the PAN card has been provided by the defence to the Court. The Court firmly believes that the signature of the PW-17 obtained by the Court is on record at Exh.187. The signature in the summons and Exh.187 were compared by the Court which seems to be of same person. This witness for his own interest, has shifted his loyalty. He cannot be trusted.

(i) However, during the course of the testimony, the panch witness PW-17 has admitted in response to the suggestion by learned P.P. that the accused are of Naroda Patiya area.

(j) This fact has not been challenged by the defence in any manner. Moreover, as has been discussed while discussing general points for appreciation of evidence that, the addresses of all the accused are on record which itself is self speaking which reveals that the accused are residents of the same area. This is putting on record a very strong circumstance that the accused are admittedly residents of the area where the witnesses are residing.

(k) It is very important that this suggestion raised by the defence itself is a strong circumstance, which is revealing the

very vital fact that the accused are not outsiders; the accused and the witnesses are residing in the same area, hence their prior acquaintance can very well be inferred. Considering the same, the much emphasize on the need of T.I.P. during the investigation loses its significance.

This Court is of the opinion that this panchnama stands supported by numerous PW viz. PW 135, 277, 245, 237 etc. and that all the said witnesses are found reliable and if their testimonies are seen collectively, then no doubt is left out in the mind of the Court about the genuinity of the panchnama. The entire mischief is apparently played at the instance of A-38. His interest is to be protected thereby. This attitude is also a circumstance to be noted. It is held to have been proving the genuine handing over of the mobile instrument to PW 277, which was handed over to the witness by adoption of due procedure for the same. No doubt is left out in the mind of the Court against credibility of this panchnama, which is connecting A-38.

7. Exh.1749 (Part-1 to 5) :-

This is the panchnama of the site of the offence as was shown by complainant PW-262. PW-256 panch Ajit Dahyabhai, PW-296 Police Officer, PW-63 Circle Officer etc., all have supported the panchnama. This panchnama is prepared during the time of I.O. No.1.

Basing upon this panchnama, PW-63 has prepared five maps in four sheets, all of which have already been discussed at Part-2 hence, repetition is avoided.

8. Exh.2203 :-

This is the panchnama of recovering the CD of the voice samples collected of A-18, A-21 and A-22 at All India Radio Station by I.O. PW-327. It was collected to send it to FSL, Jaipur. This helps to add credibility to the sting operation.

Conclusion for all the panchnamas described above at-(A) to (F) :-

I) All the panchnamas of the loss and damages are clearly demonstrating huge loss to have been suffered by the Muslim community, houses were burnt in the Muslim chawls, their properties were destroyed and damaged, the loss is of lakhs of rupees of the houses, shops, household articles, vehicles, material in the shops almost ruining the entire properties in the Muslim chawls by torching Muslim houses and shops. The charged offences to the said extent stand corroborated through these panchnamas, which all have been stated by the complainants themselves in their substantial evidence and that the same has also been contended in their different complaints. This helps in deciding the point of determination No.VII for offences u/s.427, 435, 436 and 440 of I.P.C.

II) All the inquest panchnamas show loss of lives on the date of the occurrence, which was, as on record, because of the communal riots on that date, time and place took place, so many Muslims were burnt alive, the dead bodies were in an unidentifiable position, some of them succumbed during the treatment, all those who had died on that date and whose dead

bodies were recovered from the site of the offences, which were all in the Muslim chawls opposite Nurani Masjid and more particularly near the *khancha* of water tank between Gangotri and Gopinath Society who all had died on account of the occurrence and they were all victims of the ghastly crimes committed by the majority. These panchnamas help answering the point of determination No.IX for the offences u/s.302, 307, 323 to 326 of Indian Penal Code.

III) The inquest panchnamas of two accused are suggestive of their involvement in the riots, one of whom had died because of the injuries sustained because of the gas cylinder is itself self speaking. PWs have included both the accused in the crime.

IV) The miscellaneous panchnamas are also proving the position of the place of the offence on 11/03/2002, the situation of the place of the offence during the tenure of the first I.O., the VCD showing the place of the offence and more particularly burned houses, blackened walls, man less streets were all evident of the fact that terrifying and horrifying crime had been committed at the site. These all give strength to the prosecution case.

V) All the panchnamas listed in group - (F) have been discussed above and the opinion of the Court also has been recorded below the same.

It needs a note that in this Chapter, a short note on the inquest panchnamas have been written but, in the next chapter, a chart of the inquest panchnamas have been placed on record which, very clearly, link 81 deaths with the occurrences spread

during the entire day of riot.

VI) A strong circumstance has emerged on record which shows that the accused and the victims are residing in same locality.

Following deceased were identified by different persons or from the hospital name slips.

Sr. No.	Exh.	Name Of The Deceased
1	2062	Sofiya or Sufiyabanu Majidbhai Shaikh (Hospital Name Slip)
2	203	Saidabanu Ibrahim Shaikh (Hospital Slip)
3	2064	Jubaidabanu Shabbirahmed Shaikh (Hospital Name Slip)
4	1454	Kudratbibi Kurshidbhai (Hospital Slip)
5	224	Sarmuddin Khalid Noor Mohammad (Hospital Slip)
6	214	Asif Shabbirbhai (Identified by PW 158)
7	221	Supriya Marjid (Hospital Slip)
8	207	Hamidraza Mohammad Maru (Hospital Slip)
9	2075	Shakinabanu Mehboob (Hospital Slip)
10	210	Shakina Babubhai Bhatti (Hospital Slip)
11	232	Razzakbhai Babubhai Bhatti (Hospital Slip)
12	2021	Mohammad Shafiq Adambhai (Identified)
13	1303	Moinkhan (Identified)
14	1349	Salambhai Abdullah Qureshi (Identified by PW-90)
15	1349	Hussain Mohammed Masik Qureshi (Identified by PW-90)
16	1349	Reshma Salambhai Qureshi (Identified by PW-90)
17	1349	Samir Salambhai Abdullah (Identified by PW-90)
18	1349	Imran Slambhai Abdullah (Identified by PW-90)
19	1349	Mehraj Salambhai Abdullah (Identified by PW-90)
20	219	Lalbi Majidbhai Usmanbhai (Identified)
21	219	Hazrabanu alias Jadi Khala (Identified)

22	219	Mumtaz Noorbhai (Identified)
23	2041	Zarinabanu Bundubhai Qureshi (Identified)
24	2041	Nasimbanu Bundubhai Qureshi (Identified)
25	212	Mehboob Khurshidbhai Shaikh (Hospital Slip)

All the deaths of the abovenamed victims are murders committed during communal riots at the site of offence or they had died due to the fatal injuries sustained and died during treatment.

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CHAPTER-II : THE POSTMORTEMS, INQUESTS, YADIS AND DOCTOR WITNESSES, VICTIM AND THEIR RELATIVE WITNESSES

(Point Of Determination Nos.XII and XIII On Offences U/s.302 and 307 of the Indian Penal Code)

Introduction :

1. Out of numerous deaths which had taken place on the date of the occurrence and occurred as direct and proximate result of the fatal injuries sustained on the date of occurrence by different deceased, certain deceased were identified either by their relative or on account of the name, address etc. given by them or given by the attendant, victim or police while they were admitted in the hospital on intervening night of 28/02/2002 to 01/03/2002. The identification by the relatives, neighbours etc., is reflected in the identification panchnamas

itself by names of the deceased.

2. It needs to be noted that only 13 deceased were identified as noted in inquest panchnama. All other deceased as is clear from the inquest drawn on the death of the deceased, were not identified in any manner, hence the said inquest were drawn for unknown dead bodies, by mentioning in the inquest their sex alone and in some cases even sex was declared by the panchas to the unidentifiable one.

3. However, it so happened that the crime branch gave a yadi to the relatives, of the unfound persons, missing persons or those who were inferred to have been died on the date of the occurrence, addressing to the Civil Hospital to the effect that if the copy of the P.M. would be given to the chit holder viz. the yadi holder, the Crime Branch had no objection. Upon receipt of such yadis, somewhere in 2004, PW 285 had baselessly decided, in his self-styled manner, without any identity of the dead bodies that the P.M. of so and so could be of unfound, missing or deceased so and so. This was based on his personal assessment and rather his guess work.

4. During the course of the question poised by the Court, PW 285 has clarified at paragraph 2 on page 78 under the heading of 'By Court' that, for the dead body kept at Civil Hospital, in no case, relative of the dead body came to identify the dead body, it was decided on his own assessment as to the unnamed PM was of which deceased and it is after that he has put up the endorsement on the top of all such P.M.

Like Exh.395 and Exh.396 the PM have been brought on

record to show that when the first charge-sheet was filed, the PM were without endorsement, but in the year 2004, such endorsement of name of the deceased were added. Thus, even after filing the chargesheet, PW-285 has inserted names in the P.M. upon his personal guess work.

He further explains that he did so to help the relatives of the deceased and to enable the relatives of the deceased to get the compensation as without P.M. Note, the relative concerned could not get compensation.

5. The PW-285 further admits that the dead bodies lying at Civil Hospital were of Naroda massacre, obviously of Naroda Gam as well as Naroda Patiya, and of Gulbarg massacre. In some of the cases, the police was called by him to hand over the PM of unclaimed and of the dead bodies lying in the hospital.

6. The learned advocate Mr.Kikani for defence has vehemently argued that the inquest panchnamas were prepared first and thereafter the FIR was registered later and that in that way of the matter, the FIR is ante dated. He has mentioned that had the FIR really been lodged first, then, the inquest must have mention of C.R. number, but when the inquest was drawn FIR was not written, therefore, there is no C.R. number, in the inquest.

7. Before appreciating the submission it is found appropriate to mention about Section 174 of Cr.P.C..

7(a). The provisions for holding of an Inquest and preparing an Inquest report is contained in Section 174 of Cr.P.C. The

heading of the Section is "Police to Inquire and Report on Suicide etc.,". Sub-section(1) of this Section provides that when the officer in-charge of a police station or some other police officer specially empowered receives information that a person had been killed or had died under the circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give information to the nearest Executive Magistrate and shall proceed to the place where the body of such deceased person is and there, in the presence of panchas, shall make an investigation and draw of a report of the apparent cause of death describing the wound or other marks of injury as may be found on the body and stating the manner or the possible weapon used.

7(b). The requirement of the section is that the police officer shall record the apparent cause of death describing wound as may be found on the body along with the weapon appears to have been inflicted and the panchnama to be drawn. This section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the Inquest report. The basic purpose of holding an Inquest is to report regarding the apparent cause of death. The scope and purpose of Section 174 was explained in **AIR 1975 Supreme Court 1252** wherein it has been held that "the proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what is the apparent cause of death. The question regarding the details as to how the deceased was assaulted, who assaulted etc., are foreign to the ambit and scope of proceedings under section 174.

7(c). Neither in practice nor in law is it necessary for the police to mention those details in the Inquest report. It is therefore not necessary to enter all the details in the Inquest report. The omission of not mentioning C.R. number in the inquest is not sufficient to put the prosecution case out of the Court. It seems to be routine. Moreover, even in the inquest prepared on 07/03/2002 or even 10/03/2002, there is no mention of C.R. Number hence, it appears that there is no practice of writing C.R. Number in the inquest otherwise, after so many days, the C.R. Number ought to have been inserted by the police.

7(d). The citation of learned P.P. at **Sr.No.34** replies the submissions of the defence. It is clear that non-mentioning of C.R. number in the inquest, cannot lead to hold that the FIR was ante dated. How it is not ante dated and ante timed has been discussed in the part of the judgement where general appreciation of evidence has been discussed. Hence repetition has been avoided. Suffice it to say here that the submission found merit-less and no doubt is created on the aspect.

8. The Court cannot shut its eyes to the hard reality that, during those days of communal riots in 2002, on account of unprecedented rush in Police Stations, General Hospitals for P.M. and for treatment the administration would not have been able to meet the challenge. It can safely be inferred from the testimony of PW 288 (by Court) that the doctors of General Hospitals were working 18 to 20 hours a day and that during those days of riot, were unprecedented and unusual days when work load was too much which was many many times more than the usual work load. It also seems reasonable that due to

mass casualty which is common in such days of calamities, the records were perhaps not properly made by the hospitals and even by the Police Stations. It is for this reason only, this Court has not read any malice on the part of the police for lethargy, negligence and mistakes committed by the police during the investigation. In tremendous rush of work it can happen. While appreciating the entire record, the Court cannot sit in ivory tower.

9. It is interesting to note that L.A. Mr. Kikani has emphasized that the witnesses have enjoyed the monetary compensation from the death of their relatives by identifying the dead bodies and hence today they cannot raise a plea that the dead body has a peculiar injury and that it was not PM of the dead body of their relatives. This is with reference to the fact that the record of hospital does not tally with inquest and/or oral evidence.

10. It is fitting to note that there is nothing on record to believe that the witnesses who are the occurrence witnesses or PW have identified any of the unidentified dead body. In fact, they were named by PW-285. What must have in fact happened was, there were 13 dead bodies which were identified either by the relative or on account of the name slip on the hands of the deceased, in a case when the deceased died during the treatment, the identification of such dead bodies was possible because of the hospital slips. In some of the cases in spite of the fact that the dead bodies were identified in identification panchnamas, the PM of unknown dead bodies were linked with those deceased. In this Chapter, this Court is to firstly deal with identified dead bodies, their inquests, their PM, their yadi etc.,

11. As far as the case of unidentified dead bodies are concerned, it is to be dealt with separately by this court for better clarity. At the cost of repetition it needs to be noted that what seems is that basing on the police yadi, Dr.Satapara, PW 285 has applied his guess work, and from his guess, he has accordingly made the endorsement under his signature on the top of P.M. of unidentified dead bodies.

12. Now, this endorsement on each of the postmortem report of unidentified dead body as identified dead body nowhere suggests that this endorsement is noted at the instance of any of the relative of the unidentified dead body who said so by identifying the deceased.

13. If the Yadis sent by police is seen, then the Yadi Exh.2131 to 2163 contends that the postmortem notes of so & so deceased may be given to the holder of the yadi, but there it is nowhere mentioned that the said chit holder has identified the dead body of any of the deceased. It clearly seems to be guess work of PW 285.

14. It is clear on perusal of page-78 of the testimony of PW-285 that, the naming the unidentified dead body was a brain child of this PW 285 which may be because of some administrative pressure to complete the task of issuing P.M. or may be to please certain people or for any another cause. Be that as it may be, but the fact remains that the supporting witnesses have no role to have been played in falsely identifying the dead bodies, hence the stand taken by L.A. Mr. Kikani does not find favour of the court. No relative of the

deceased has played any role in wrongly identifying deadbody of any of their relative. In fact, PW-285 did this exercise in the year, 2004 when, none of the dead body was in his custody, hence, identifying the dead body was never done. Even as has come up on record even in the first charge-sheet the P.M. were filed as unidentified child / male / female.

15. In case of postmortems also, the doctor witnesses have testified and proved the postmortem notes, but they have disowned the endorsement (made by PW 285) on the top of the P.M. It needs a note that the doctor witnesses can only link the occurrence correctly, when in the inquest panchnama, the identification of dead body is done and as far as assessment of PW 285 is concerned, it is very natural that it would not be tallying with the deposition of the relatives of the deceased.

16. Considering the same, the PM notes cannot be believed to be genuine except when it tallies with the oral evidence of the eye-witness or oral evidence of the relative who has identified the dead body at the time of inquest.

17. After the police found dead bodies, may be unidentified one and when the death was unnatural, the police used to send it for postmortem, but merely that does not give right to hospital administration to decide or to name the unidentified PM of dead bodies based on the personal assessment.

18. PW 285 is an expert as far as medical science is concerned, but he cannot be termed to be an expert to name the unclaimed or lying dead bodies or to fill in the names for the unidentified dead bodies.

As is clear from the yadis of Crime Branch, the police has also sent many yadis for the lost, unfound or for the missing persons and for the dead bodies which were unidentified which were sent by the police for the postmortem but that does not mean that the postmortem notes lying in the hospital of unidentified dead bodies can be given names in this manner on the personal assessment and speculation of the hospital authority.

19. It is needless to add that the Indian Evidence Act does not recognize anyone's personal opinion, personal assessment or say speculative work as evidence except the opinion of an expert which too on the subject in which the person possesses expertise. Even the opinion of such experts is also not binding to the Court, and has a corroborative value, but the person who is not expert of naming the dead body and when he admittedly named the dead body on the personal assessment, it has no room in the domain known as Indian Evidence Act.

20. This Court therefore, is of the humble, but firm and candid opinion that the naming of the postmortem note by PW 285 though might have done with some good purpose or in the interest of the relatives of the deceased, but the same cannot be held to be evidence and hence needs no appreciation by this Court as admissible evidence on record.

21. Even if the assessment of PW 285 may be right in some cases as, after all, it is guess work of reasonably expert medical officer who has experience of doing number of postmortems but still the fact remains that it is based on hypothesis and

conjecture of an individual, which cannot replace the need of legal proof.

22. It is not prudent and not in accordance with judicial proprietary and settled norms of appreciation of evidence or definition of evidence to hold the accused guilty on this personal guess work or to grant the accused benefit of doubt on the same basis.

The substantial evidence is of the eyewitnesses. The circumstantial evidence and documentary evidence and/or other permissible evidence are on record which can come to the aid of the Court.

23. To prove murders and/or homicidal deaths of the deceased - who can as well be inferred to have been died - the dead body need not be found nor there is need of any yadi, inquest or even PM.

24. Now therefore, only substantial evidence of the relative of the deceased or of the eyewitness of the incident, would be appreciated to answer the charge wherever the PM or inquest etc., are found to be of doubtful nature.

Keeping the above discussion in mind, first of all the cases of the identified dead body are being discussed one by one.

[A] Deaths proved by Inquests, PM etc. - In cases where the deceased were identified :-

1. Case No.1 (Number given by the Court for

convenience and proper reference by the Court) Death of Mohammad Shafiq Adambhai Shaikh Inquest, Yadi, Relevant PW etc. - (Death No.1 Morning Occurrence)

(1-1) Exh.2021 is the inquest of the deceased Mohammed Shafiq Adambhai Shaikh, who was aged about 18 years, was residing near Nurani Masjid. The inquest panchnama has been exhibited by the admission of defence. If the said inquest panchnama is seen, then, it becomes clear that on 1st March, 2002, brother of deceased Mohammad Shafiq Adam Shaikh viz., brother Mehboob Adam Shaikh, residing at Naroda Patiya, Nurani Masjid has identified the dead body.

(1-2) In the inquest it has been clarified that, on the date of the occurrence, the deceased was injured at the Naroda Patiya road in firing. It is however notable that it is not specified whether the firing was police firing or private firing. The deceased was injured on his thigh and had bleeding. From the inquest it emerges that the deceased was injured because of firing at about 11.30 a.m. of the date.

(1-3) Exh.2020 is the postmortem note of the deceased wherein the dead body was shown of Muslim aged 18 years, had blood stained clothes and had wounds. The death is opined to have been caused on account of shock and haemorrhage as a result of bullet injury.

(1-4) PW-47 is the PM Doctor who has supported the fact that deceased died on account of bullet injury. The injuries have been opined by the PW to be fire arm injuries and that it is these fire arm injuries which were fatal injuries and that as

opined, on account of the injuries death can occur in natural course. This doctor has further opined that the bullet has passed through and through and that the deceased had also sustained injuries which can cause by blunt weapon.

(1-5) All the above discussion if read with the testimony of the PWs who have seen private firing having been done by A-41, A-2 and A-44, etc. then, it is probable that the deceased had died in private firing. In the case, the death of the deceased was in the riot where he has also sustained injuries with blunt weapon. Had he been died in the police firing, there would not have been injuries by blunt weapon on his body as, there is no case put forth by the police to have caused injuries by blunt weapon to anyone at the site. Hence, it is a clear case of sustaining injuries by blunt weapon and firing in an attack by rioter at the site which was unnatural, homicidal death.

FINDINGS ON DEATH OF MOHAMMAD SHAFIQ ADAMBHAI SHAIKH (Death No.1) :

This Court is of the opinion that the opinion given by the Doctor has not been challenged. It is true that the contentions in the inquest panchnama are after all based on hearsay evidence of the police, but then, the fact cannot go unnoticed that the death of the deceased had occurred on account of the fatal injuries sustained by him, which were caused by fire arm and which were bullet injuries. The deceased had also sustained injuries by blunt weapon. The documents on record read along with the deposition of the Doctor makes it amply clear that the deceased died on account of firing and such fatal injuries were sustained by the deceased in the occurrence, on

the date, at Naroda Patiya in the morning incidents on the road. It is only morning incident where, firing was done. The use of blunt weapon links the death with riotous activities of the accused. This is held to be murder in the morning occurrence by the unlawful assembly. This is also clearly attempt to murder.

2. Case No.2: Death of Saidabanu Ibrahim Shaikh, aged 23 years, resident of Hussain Nagar (Death No.2) :

(2-1) Vide inquest Exh.203, it is clear that on 28.02.2002 by pouring petrol and kerosene and by burning, the deceased had sustained burn injuries by the mob at about 6.00 p.m.

(2-2) Exh.2051 is yadi which both tallies.

(2-3) Postmortem Exh.583 reveals the deceased to have sustained 75% burns, pus was coming out from lungs, cause of death was shock following burns and Septicemia. This tallies with the testimony of the doctor viz., PW-96. During the course of the cross-examination, the doctor was confronted on the aspect that his statement was not recorded during the investigation. But, then it is known to one and all that there is no such practice of recording statement of the doctor during investigation. Collecting the PM note itself is a kind of statement of the doctor. Hence the cross-examination does not bear any fruit.

(2-4) PW-158 is the brother of deceased Saidabanu who states that his divorcee sister Saida, her daughter Gulnaz etc., were trapped at *khancha* in the evening incident. PW-191 is

also an eyewitness to the incident.

(2-5) PW-158 is to be discussed at length. Suffice it to say here that PW-158 proves the entire occurrence in which Saidabanu had sustained fatal injuries as a result of which she died. PW-158 is giving description of the entire incident, which is a subject matter of discussion in another part. Hence it is avoided discussing here.

FINDINGS on the Death of Saidabanu Ibrahim Shaikh (Death No.2 - Evening Occurrence) :

Murder of Saidabanu has been proved to be result of the fatal injuries sustained by her in the occurrence of evening at khancha on the date and time of the occurrence. This is also clearly an attempt to murder.

3. Case No.3 : Death of Jubaidabanu Shabbir Ahmed Shaikh (seems to be daughter-in-law of Kudratbibi) (Death No.3)

(3-1) Upon perusal of inquest panchnama Exh.2064, yadi Exh. 2063, postmortem note at Exh.584, oral evidence of PW-96, PM Doctor, it is becoming clear that the death of Jubaidabanu was on account of shock following 100% burns.

(3-2) During the course of cross-examination the witness has confirmed his opinion about 100% burns of deceased Jubaidabanu. Nothing substantial is forthcoming in the cross-examination except that there were bandages on the body of the Jubaidabanu and blackening of skin is because the carbon

was generated. As such, no challenge is made to the identity of the deceased, which is for the reason that the deceased was already at Civil Hospital admitted on the same day and there was slip on her body which was clarifying her identity. She was admitted at 22:55 hours on 28/02/2002 at Civil Hospital as is contended in EXH.2064 - Inquest and had died. Hence, she is inferred to have become a victim in the evening occurrence. PW-158 supports it. Therefore, the following finding :

FINDINGS OF DEATH OF JUBAIDABANU SHABBIR AHMED SHAIKH (Death No.3 - Evening Occurrence) :

Looking at the facts of the case in its entirety, the murder of Zubedabanu Shabbirahmed Shaikh stands proved to have been occurred on account of the extensive fatal burn injuries and resultant Septicemia on the date, place and time of the evening occurrence. This was also an attempt to murder.

4. Case No.4 : Death of Kudratbibi Khurshidbhai (Death No.4)

(4-1) Exh.2055 is the yadi for sanction of inquest. Exh.1454 is the inquest wherein there is mention that the dead body of Kudratbibi Kurshidbhai was drawn at Civil Hospital at the PM Room. According to inquest itself she had sustained burn injuries in the occurrence on the date, time and place of the occurrence in the communal riots who was brought to Civil Hospital and had died there.

(4-2) Exh.818 is the PM note of the said deceased Kudratbibi which is without endorsement on its top and it is by

the name of the deceased wherein the cause of death has been shown as extensive burns lead to shock and death.

(4-3) PW-128 is a P.M. doctor, who has proved the PM note and has opined that the kind of the burn injuries sustained by the dead body were sufficient to cause her death in ordinary course of nature and it is possible if one is set-ablaze after inflammable substance was thrown.

(4-4) During the course of the cross-examination the PM doctor has denied the injuries to have not been on the vital parts. The injuries were on the vital parts of the body.

(4-5) PW-112 is the sister of deceased Kudratbibi who states about the death of her sister by hearsay evidence but the same has not been challenged during the course of the cross-examination.

(4-6) The fact that Kudratbibi died in the occurrence stands proved. From the evidence on record it is proved that the death of Kudratbibi had occurred in the incident, at the site and time of the incidents in the evening.

(4-7) PW-158 is also an eyewitness where in the evening incidents Kudratbibi was also injured.

(4-8) Exh.818 is the PM done by Dr. PW-128. In the PM it is clear that the deceased sustained burn injuries on her face, stitch wound was there on her forehead, first to third degree burns were sustained over face, neck, breasts etc. and she had stitch wound of 3 cm long over forehead.

(4-9) The doctor has opined that this stitch wound was possible by hard and blunt substance. It was sufficient for the death of the deceased in natural course. The deceased died on 1st March, 2002 but the PM was done on 5th March, 2002, hence it does not inspire confidence in the document.

(4-10) PW-228 at paragraph-13 states that Kudratbibi was hurt by stones by some miscreants of the mob at that time. Hence, the pieces of flesh came out from her head or forehead and that the deceased was burned completely. This witness is an eye witness. His opinion of injury on the forehead by blunt and hard substance gets tallied from this witness.

(4-11) This witness further states that at the *khancha* stone throwing took place in which he himself was also injured. His house was also looted at Hussain Nagar. He identified A-22, A-18 and A-28 and he states that he knows Bhavani and Guddu who were also present in the mob.

(4-12) During the course of the cross-examination at paragraph-30 it has been confirmed from the witness that at the time of incident his age was 14 years. Through this witness it gets confirmed that the incident of the water tank/*khancha* took place at about 6.30 p.m.

(4-13) In the opinion of this court, what was the age of the witness is not important. Whether what the witness states is reliable or not. In the opinion of this court, this witness is very natural and reliable and being child his evidence sounds to be dependable one.

FINDINGS on the Death of Kudratbibi Khurshidbhai (Death No.4)

In this set of circumstances,

(a) The ghastly happenings of the massacre in the evening incident near *khancha* at about 6.30 p.m. stands confirmed.

(b) The involvement of deceased Bhavani, deceased Guddu, A-18, A-22 and A-28 in the evening incident stands confirmed. In the same way their presence is also getting proved beyond all reasonable doubt.

(c) Hence, these accused are found fully involved in the homicidal death viz. murder of Khudratbibi Khurshid.

The entire case and more particularly attempt to murder of Kudratbibi Khurshid gets support from PW-72 Shakila daughter of Kudratbibi as well.

5. Case No.5 : Death of Sarmuddin Khalid Noor Mohammad (Death No.5) :

(5-1) On perusal of inquest Exh.224, it is clear that the deceased sustained injury on 28/02/2002 at 18:30 p.m. in the evening occurrence. Yadi Exh.2054, the deposition of PM Doctor at Exh.128 and PM note Exh.819 wherein the deceased is identified and in the PM note shown with the name and not with the endorsement, since tallying with each other and since from the cross-examination of the PM Doctor no reasonable

doubt is created against the fact of death of Sarmuddin Khalid Noormohammad, it is held as under :

(5-2) The eyewitnesses shall be discussed later at an appropriate part of the judgement.

(5.3) It is murder in the evening occurrence.

FINDINGS ON DEATH OF SARMUDDIN KHALID NOOR MOHAMMAD (Death No.5)

Looking at the facts of the case in its entirety, the murder of Sarmuddin Khalid Noormohammad stands proved to have been occurred on account of the extensive fatal burn injuries and resultant Septicemia on the date, place and time of the evening occurrence. It was also attempt to murder.

6. Case No.6 : Death of Asif Shabbir, aged 5 years (Death No.6) :

(6-1) Exh.2053 - Yadi, Exh.214 - Inquest Panchnama, PW-158, PM-Exh.411 Dr. PW-50 and PW-72 - Paternal Aunt of the child Asif proves the occurrence.

(6-2) Exh.214 is the inquest panchnama drawn at Civil Hospital on the dead body of one Asif Shabbir (grandson of deceased Khudratbibi) aged 5 years.

(6-3) The dead body was identified by PW-158 resident of Hussain Nagar as is clear in the inquest itself. This PW is also eyewitness of the incident.

FINDINGS ON THE DEATH OF ASIF SHABBIR : (Death No.6) - EVENING OCCURRENCE :

Child Ashif Shabbir died at the site, on the date and time of the evening occurrence of khancha/water tank which is homicidal death.

7. Case No.7: Death of Supriya Marjid, aged 35 years (Death No.7)

(7-1) Vide Exh.221 the inquest panchnama drawn for deceased Supriya Marjid at Civil Hospital is on record. As has already been discussed earlier, from the contents of the inquest panchnama, the fact of the case, the occurrence, the injuries sustained on account of occurrence etc., stand very much clear. Her address was not known whereas, she was admitted on 28/02/2002 at 23.50 hours and as emerged on record, she had died on 07/03/2002.

(7-2) Exh.2067 is the yadi for sanction of the inquest.

(7-3) Exh.779 is the PM note without endorsement of PW-285 and with name of Supriya Marjid is on record.

(7-4) Vide Exh.780 the death report of the Civil Hospital is on record wherein also Supriya Marjid has been mentioned to be aged 35 years address of whom was unknown. The diagnosis after the PM is written as 80% burns.

(7-5) PW-121 has fully supported his opinion given in the

PM about the sufficiency of the burn injuries caused to the deceased on the vital part of the body, to cause death. No substantial challenge has been offered in the cross.

(7-6) Considering the documents and oral evidence on record, this Court is of the opinion that there is sufficient evidence for the homicidal death of Supriya Marjid, aged about 35 years, Naroda Patiya, who had died due to fatal injuries sustained by her during the noon occurrence on the date and time and site of the offence as there is no PW - the eyewitness of the evening occurrence to link it with evening occurrence.

FINDINGS on the Death of Supriya Marjid (Death No.7) - NOON OCCURRENCE :

Death of Supriya Marjid has been proved to be result of the fatal injuries sustained by her in the occurrence of noon on the date and time of the occurrence.

8. Case No.8 : Death of Hamid Raza Mohammad Maroo, aged 10 years (Death No.8) :

(8-1) Inquest Exh.207, Yadi-Exh.2068, PW-76, PM-Exh.421, PM Doctor PW-51 and PW-191 - father of the deceased.

(8-2) Inquest panchnama Exh.207 is of the boy named Hamid Raza, aged about 10 years, was residing at Hussain Nagar. He was brought to Civil Hospital on 28th February, 2002 and had died during the treatment on 11th March, 2002. The boy did sustain burn injuries on his chest, hands, legs etc.,

and had bandage according to the inquest.

(8-3) Exh.2068 is a yadi to draw inquest.

(8-4) Exh.421 is the postmortem report of the deceased wherein it has been observed that the deceased boy had 75% burn injuries overall the body, had 2nd to 3rd degree burns, his entire face and neck had burn injuries and pus formation could be seen. It is opined that the death of the deceased boy was caused due to shock and Septicemia as a result of burn injuries.

(8-5) PW-51 has opined that pus formation was seen at lung section and Septicemia was noticed. No substantial challenge has been offered to the Doctor witness.

(8-6) PW-191 father of the deceased testifies in tune of the contents of inquest.

FINDINGS on the death of Hamid Raza Mohammad Maroo, (Death No.8) :

It is held that homicidal death of Hamid Raza had occurred in the incident on the date, time and place of offence. This seems to be in the evening occurrence.

9. Case No.9 Death of Shakinabanu Mehboobbhai aged about 8 - 12 years (Death No.9) :

(9-1) Exh.2075 is the inquest of Shakina Mehboobbhai aged 8 years, according to which, while she was at her home at

about 10:00 a.m., the mob of miscreants had torched her house. In this, she had sustained the injuries on the date and time of the offence who succumbed to the fatal injuries on 04/03/2002.

(9-2) Exh.2074 is the yadi.

(9-3) Exh.762 is the postmortem report with the name of the deceased wherein the cause of her death is shock as a result of burns and its complications.

(9-4) PW-119, the PM Doctor proves the postmortem report opining that the deceased being child of 12 years, would certainly have less resistance power than the adult person and that the burn injuries on the body were sufficient to cause her death, which were on vital part of her body who suffered infection as well.

At para-40, the cross-examination of the PM doctor has been perused. But there does not appear any substantial challenge to the fact of death of deceased Shakina Mehboob on the date, time and place of the offence.

FINDINGS on the Death of Shakinabanu Mehboobbhai (Death No.9) - MORNING OCCURRENCE :

The homicidal death, apparently the murder of Shakinabanu was on account of the burn injuries sustained by the deceased on the date, time and place of the morning occurrence of torching the dwelling house of Muslims.

10. Case No.10 : Death of Shakina Babubhai Bhatti (Death No.10) :

(10-1) Vide Exh.210 Inquest panchnama at V.S.Hospital is on record. Deceased Shakina was burnt alive in her house at 10:00 a.m. of 28/02/2002 while, the mob burnt her house and when, she was inside her house. The deceased was admitted for her treatment with the similar history as Razak Babubhai Bhatti who seems to be her brother as deceased Shakina was shown to be aged 22 years and Razak was aged 13 years. Yadi Exh.2056,postmortem Exh.760 are tallying with each other. The PM Doctor PW-118 has opined in his testimony that the dead body had burn injuries which were sufficient to cause her death in ordinary course of nature. The kind of the injury was possible if inflammable substance like petrol or kerosene is thrown on the body and then if one is set-ablaze. The defence is on the line that previous treatment must have been given to the deceased and that no injury other than burn injuries were found on the dead body.

(10-2) The documentary evidences are sufficient as proof of the death of the two. No other oral evidence is available but that could not create any doubt against the burn injuries sustained by both the deceased and their resultant death on account of the said injuries.

(10-3) This case is similar to case of Razak and all the documentary evidences and the testimony of PM tallies with each other. Hence, combined findings of both the cases are as below:

FINDINGS on the Death of Shakina Babubhai Bhatti (Death No.10) MORNING OCCURRENCE :

(a) Death of Razak Babubhai Bhatti and Shakina Babubhai Bhatti were caused on the date, time and site of the morning occurrence, their fatal injury had led to their deaths.

11. Case No.11 - Death of deceased Razak Babubhai Bhatti (Death No.11) :

The inquest panchnama of deceased is at Exh.232, PW-33 is Inquest Panch, Exh.2057 is Yadi, Exh.813 is PM note and PW-127 is the PM Doctor.

(11-1) First of all it needs a clarification that this is one of the few postmortem notes, which is prepared on the name of the deceased noting in the column of name in the PM itself for which reason it needs perusal.

(11-2) Exh.232 is the Inquest drawn in presence of PW-33, of deceased Razak Babubhai Bhatti, aged 13 years, near Nurani Masjid, Patiya.

(11-3) In the inquest it has been clarified that on 28/02/2002 while Razak was at his home, the violent mob had torched his house and he had sustained burn injuries in the incident. He was taken to V.S. Hospital on 01/03/2002 and he died on 11th March, 2002.

(11-4) The inquest has been drawn at PM Room of V.S. Hospital. It is specified that on the entire face, chest, hands,

legs of this boy the burn injuries and bandages were present on his body.

(11-5) Exh.2057 is yadi granting sanction to draw the inquest.

(11-6) Exh.813 is his PM report by doctor (PW-127) wherein the cause of the death has been mentioned as shock as a result of burns and its complications.

(11-7) The postmortem report shows the injuries to be tallying with inquest panchnama, the PM Doctor is highly qualified and has completed about 25000 PM. Hence, this PW is an expert whose deposition will also be useful for other such cases. It has been opined during testimony by the PM Doctor that the child sustained 2nd to 3rd degree of burns and being child, he would have less resistance, injuries were on vital parts of the body, which were sufficient to cause death in ordinary course of nature.

(11-8) The P.M. Doctor has opined that if petrol or kerosene is thrown on the body and if one is set-ablaze, the kind of the injuries sustained by the deceased are possible.

(11-9) In the opinion of this Court, the complications were apparently evident that of burn injuries. There were signs of burn injuries to have been sustained during the lifetime of the deceased as the same were opined to be antemortem.

(11-10) The opinion given by this doctor while his testimony at para-26 is worthy to be noted down so as to use it for other

such cases. It shows that in case of 2 - 3 degree burns if vital parts of the body are covered, it has risk of life. PW states that:

> ***"I agree that the classification of burns injuries goes upto 6 degrees. I do not agree that in this case, since the burns degrees are 2 to 3 only, the patient could have survived had there been proper treatment. I volunteer that upon perusing the entire column No.17 noticing the affected area of the body and looking at the injuries the overall cumulative effect would be, the suggestion is not agreeable one….."***

The suggestion by the defence that the dead body was not identified falls on the ground when in the PM report at column No.9 it has been specified that "identified body with name slip on left fore arm".

FINDING on the death of deceased Razak Babubhai Bhatti (Death No.11) MORNING OCCURRENCE :

The deceased Razak Babubhai Bhatti died on account of the fatal injuries sustained by him on the date, time and place of the morning occurrence on the road.

(12) Case No.12 : Death of deceased Sufiabanu / Sofiabanu Majid Shaikh (Death No.12) :

Exh.2062 - Inquest, Yadi Exh.2061, PM - Exh.578, PW-95.

(12-1) Exh.2062 is the inquest of deceased Sofia Majid

Shaikh (daughter of PW 156), aged 19 years, resident of Hussain Nagar, who was admitted at Civil Hospital at 23.45 hrs. on 28/02/2002 and who died after about 24 hours. The inquest has been drawn at Civil Hospital hence the question of identity of the deceased does not arise. As is mentioned in the inquest, there were no signs of any torture on her private part.

(12-2) Yadi to draw inquest is at Exh.2061.

(12-3) This PM at Exh.578 seems to be of this deceased only, but as appears the name of the father of the deceased has been written to be Mamudbhai instead of Majidbhai. This is possible because according to inquest, the name has been written in the hospital slip fromwhere while writing this name, this ministerial error seems to have been committed. This is for the reason that there are only 13 dead bodies which have been identified. All other dead bodies were unknown and that the prosecution has put up Exh.578 P.M. as PM of this deceased. There is nobody else having this name and secondly the date and time of the death as shown in the inquest and the time of receipt of dead body for postmortem is tallying with each other. Considering the said, it seems that Exh.578 is the P.M. of this deceased.

(12-4) PM note is at Exh.578 wherein the cause of death is shock due to extensive burns, carbon particles is opined by the Doctor can be seen in trachea shows carbon-dioxide is inhaled during the lifetime of the deceased. It has also been opined that if the inflammable substance is thrown and thereafter if such person is set ablaze, the kind of the injuries sustained by the deceased is possible.

(12-5) At para-36 of the testimony of PW-95, the PM Doctor, it has been elicited that on internal or external examination of the dead body no signs of rape on her private part were noticed.

(12-6) PW 156 is father of this deceased, but if the deposition of the said witness is seen then the witness seems to have been confused in telling date of death of his daughter when paragraph 30, 159, 166 etc. are perused.

FINDINGS on the death of deceased Sufiabanu / Sofiabanu Majid Shaikh (Death No.12) EVENING OCCURRENCE :

The death of the deceased Sufiabanu Majid Shaikh stands proved to have been occurred on account of the fatal injuries sustained by her on the date, time and place of the evening occurrence at Water Tank.

13. Case No.13 Death of Mehboob Khurshidbhai Shaikh (Death No.13) :

(13-1) On perusal of the inquest panchnama at Exh.212, yadi Exh.764, P.M.Note Exh.763, like all the other cases discussed herein above, the death of Mehboob Khurshidbhai Shaikh stands proved.

(13-2) Vide Exh.853 - dying declaration viz., the previous statement has been brought on record. Upon perusal of the same, it is getting corroborated that near Gangotri Society

besides Jawahar Nagar Hutments, on the road at about 5.00 p.m. of 28/02/2002 while the deceased was passing from the place, suddenly the mob has beaten him and then, after pouring kerosene over him, he was burnt.

(13-3) PW-119 has noted surgically stitched wound on right fronto parietal region of the deceased and another surgical wound was also present on the left parietal region. He has opined that the injuries sustained by the deceased were possible because of stone pelting or having been subjected to the blow by hard and blunt substance and that the deceased had also suffered burn injuries.

The defence has taken a ground of previous treatment viz., prior to admitting in the hospital, but, in the opinion of this Court that is not a material aspect at all. The material aspect is date, time, circumstances and site of offence where the injuries have been sustained. The witness has admitted that some of the injuries on the deceased, were simple injuries. But again that is indeed not material in the fact of the case that virtually, the deceased had died on account of the burn injuries, its shock and its complications.

FINDINGS ON THE DEATH OF MEHBOOB KHURSHID SHAIKH (Death No.13) NOON OCCURRENCE :

Looking at the facts of the case in its entirety, the death of Mehboob Khurshid Shaikh stands proved to have been occurred on account of the extensive fatal burn injuries and resultant Septicemia on the date, place and time of the noon occurrence as seems from the documents on record.

14. Common Notes :

In all the P.M., whether of the identified dead body or of the unidentified dead body, it is specifically contended that the dead bodies were from Naroda Police Station, the injuries whether it is burns or otherwise were sustained by the deceased which were ante-mortem in nature. Hence all these deaths discussed hereinabove and to be discussed can safely be linked with the charged offences. These deaths are homicidal deaths, satisfying requisites of murder. No provocation by the victim is the case of anyone and that as has been held at an appropriate part of the judgment, these are murders. All these murders can safely be inferred to have been committed by the unlawful assembly.

B - Deaths proved otherwise :-

1. Death of Moin Khan/Soin Khan, dead body identification panchnama Exh.1303, Yadi etc. (Death No. 14) (in the fact of the case, it seems to be of crippled person) :

(1-1) The identification panchnama Exh.1303 has been proved by PW-191 who has stated in specific that the contents of panchnama are true and correct. There is no cross-examination on it. Hence, the contentions stated by PW-191 have remained unchallenged.

(1-2) This identification panchnama has been drawn on 05/03/2002 at P.M.Room of Civil Hospital. Deceased Moinkhan /

Soinkhan was found to have been burnt on his entire body.

(1-3) The dead body was identified by Razakbhai Usmanbhai Shaikh. This Razak Usmanbhai Shaikh has not been examined as PW. This Razakbhai has stated that he does not know the name of father of the dead person, but he adds that the dead person was residing at Hussain-Ni-Chali.

(1-4) The identification of the dead body is suggestive that the death of Moinkhan was on account of the occurrence and on the date because of fatal injuries sustained by deceased Moinkhan / Soinkhan on the date.

(1-5) This circumstantial evidence and the document prove the death of Moinkhan to be homicidal on account of the burn injuries sustained by the deceased on 28/02/2002 in the occurrence.

(1-6) It needs a note that in the identification panchnama Exh.1303, the name of the deceased is written in regional language and is not very much legible, but it can be either readable as Soin Khan or Moin Khan.

(1-7) If the identification panchnama is perused carefully then there is clear mention of the iron clipper on the right leg of the deceased which is with joint. This normally goes with the crippled person or there may be some operation as well, as there is no opinion of any doctor or of parent or relative of Moinkhan about the perfect identity of the dead body. It cannot be joined with the testimony of mother of Moiyuddin (PW 261) who had died at the site of the occurrence. No doubt, the

mention of crippled person is made by mother of Moiyuddin PW 261, but at the same time, the wife of PW 74 was also crippled viz. lame and having one eye, mother of PW 259 was also crippled, even one male deceased was also physically handicapped as emerged on the record, hence any dead body with the iron clips cannot be treated as the dead body of Moiyuddin except in the case, when the person who identifies, steps into the witness box and passes through the test of cross-examination and when the close relative of Moiyuddin identifies Moiyuddin who being a person in daily contact with Moiyuddin can better identify the body.

The possibility of this dead body to be of crippled person cannot be ruled out, but every such possibility cannot be treated as evidence.

(1-8) The dead body of the Moiyuddin has been seen by PW 177 and PW 167. Razak Usmanbhai who has identified this dead body has not been examined and when he does not know name of the father of the Moinkhan without any evidence, it cannot be linked with death of Moiyuddin, however, the fact remains that one Moinkhan had died on account of the occurrence.

FINDINGS ON DEATH OF MOIN KHAN / SOIN KHAN : **(Death No.14) :**

It is held that deceased Moinkhan / Soinkhan has been murdered in the occurrence, at the site of the occurrence and on the date because of the burn injuries. This death cannot be linked with Moyuddin - son of PW-261. Even this murder can

also be inferred to have been committed in any of the occurrence by the unlawful assembly as, the modus is the same.

2. Death of Six family members of Jaidabibi alias Ghoribibi (PW 90) (Death No.15 to 20) :

(2-1) Exh.1349 is the identification panchnama which was drawn in presence of PW-196 at Civil Hospital, at PM Room. As is clear from this panchnama itself, on 28th February, 2002 in the communal riot and the violence spread thereafter, death of several Muslims had occurred.

(2-2) PW-90 has identified on 04/03/2002 dead bodies of seven of her family members, but later she learnt that her one of the sons was alive. Hence in nutshell, it can be said that she has identified six of her family members from the dead bodies. They are as under:

(1) Salambhai Abdulla Khureshi, aged about 30 years
(2) Reshma Salam, aged 14 years
(3) Samir Salam, aged 12 years
(4) Imran Salam, aged 6 years
(5) Meraj Salam, aged 10 years
(6) Hussain Mohammad, aged 20 years (son of PW-90)

(2-3) Sr.No.1 was brother-in-law and all shown at Sr.No.2 to 5 were children of the said brother-in-law of PW-90 and Sr. No.6 was her own son. Exh.1349 the common panchnama to identify all the dead bodies which was drawn on 04/03/2002 at about 14.30 hours.

(2-4) Though not required but as a test case their PM are scanned. Exh.638 is endorsed as PM note of the deceased mentioned at Sr.No.1, Exh.582 is the PM note of deceased at Sr.No.2; Exh.597 is endorsed to be the PM note of deceased at Sr.No.3; Exh.1949 is shown as the PM note of deceased at Sr.No.4; Exh.602 is PM note of deceased at Sr.No.5 and Exh. 658 is shown to be PM note of deceased at Sr.No.6.

(2-5) On perusal of all these PM notes a terrific irony is highlighted on record. All these PM notes are of identified dead bodies but these PM notes have been linked with the named deceased on account of the self-styled endorsements made by PW-285. If these PM notes are seen, the date of receipt of dead body in case of Exhs.638, 528, 597, 1949 and 602 viz., except for Exh.658 is 1st March, 2002. But if the identifying panchnamas of these dead bodies are seen, they were identified on 04/03/2002. If these panchnamas are believed then, the deceased were identified on 1st March, 2002 and if this panchnama is believed, the deceased were identified on 04/03/2002. It is not clear as to what about the hospital slip or where is the inquest panchnama etc. In nutshell, the endorsement is not inspiring confidence of the Court.

(2-6) In case of one of the family members viz., the son of the PW-90, the date of receipt of the dead body is 02/03/2001. It is different that upon asking it was clarified to be slip of pen, but then this reflects the slipshod manner adopted by the hospital authorities. If this situation is believed, then, the PM is before death on record.

(2-7) This Court fails to understand that when the dead bodies were undisputedly identified by PW-90, what was the need of putting endorsements to link the PM of unidentified dead bodies with the mentioned six deceased instead of writing the name in the Column of the deceased based on the identification done. Moreover, after identification why the name was immediately not filled in, in the P.M. by the hospital authorities. This confusion on record is adding hurdle in believing the endorsement of PW-285.

(2-8) It seems that in an anxiety to link up the PM with any of the deceased, by hook or crook, the investigating agency at Crime Branch and PW-285 for and on behalf of the hospital authority, have not left a single stone unturned. It seems that the entire exercise was not based on truth, but based on mere guess work which is not permitted to be done by the hospital authorities as well as by the Crime Branch.

(2-9) This is something which in fact shows the hook and crook guess work resulting into mockery of keeping record in the general hospital and the poor, inefficient and inept investigation. The entire picture is very gloomy and sad. When it can be seen that because of this kind of method adopted by General Hospitals and investigating agency, the prosecution case suffers too much.

When the endorsement on the PM notes are not reliable then no fruitful purpose would be served to link up the death of the deceased with the crime as in the guess work, the injuries of the deceased would seldom match. Since the PM Notes cannot be said to be the right P.M. Note of the deceased

then there is no use of discussing the oral evidence of concerned PM doctors, which are bound to be according to the contents of the PM notes.

(2-10) PW-90 has testified at para-16 that she had been to Civil Hospital where she was shown dead bodies and she had identified the dead bodies of her six family members. This is totally proving the panchnama Exh.1349 to have been drawn properly. Even PW-196 supports the panchnama. It is therefore proved that the dead bodies of the family members of PW-90 were identified dead bodies but, the investigating agency has miserably failed to collect the postmortem on time and that thereafter haphazardly, with the help of hospital authorities, the PM of unidentified dead bodies were wrongly connected with the mentioned dead bodies.

(2-11) Considering the situation, this Court firmly believes that this court should only act upon the oral evidence of the eyewitnesses and other witnesses on record. Whichever document goes with the substantial evidence can only be believed and appreciated otherwise, as emerged on the record the entire record is wrongly linked with any of the deaths caused on that day.

FINDING ON DEATH OF (1) Salambhai Abdulla Khureshi, (2) Reshma Salam, (3) Samir Salam, (4) Imran Salam, (5) Meraj Salam and (6) Hussain Mohammad (Death Nos. 15 to 20) - EVENING OCCURRENCE :

The murders of the six had been caused on 28/02/2002 in the evening incident, at Gopinath Society, the description of

which seems to be related with *khancha* or Water Tank incident by the unlawful assembly there.

3. Deaths of Lalbi Majidbhai W/o. Abdul Majid, Jadikhala and Mumtaz Noorbhai (Death Nos.21, 22 & 23):

(3-1) The common identification panchnama of the three women has been drawn at Exh.219 which has been proved by PW-29. According to the identification panchnama, three deceased women died due to burn injuries.

(3-2) Out of them (a) Lalbi Majidbhai (wife of PW-156) aged 45 years, resided at Jawahar Nagar has been identified by (1) Jabbar Jamalbhai Sepoy resident of Jikar Hasan Chawl as wife of his brother-in-law.

(3-3) Jadikhala, was identified by the Jabbarbhai specifically stating that she was residing near his house at Jawarhar Nagar.

(3-4) Mumtaz Noorbhai was identified by one Rahimbhai Noorbhai Ajmeri as his own sister.

PW-219 clarified that Mumtaz Noorbhai was identified by one Rahimbhai Noorbhai Ajmeri who seems to be of Naroda Police Chowky who has introduced the deceased as his sister.

(3-5) The prosecution has proved the burial receipt at Exh.2358 as that of this Mumtazbanu Mohammadbhai Shaikh.

Upon analysing, it is learnt that the identification panchnama is dated 05/03/2002 whereas the burial receipt at Exh.2358 is dated 04/03/2002. That being the situation, apart from not tallying the name of Mumtaz Noorbhai with Mumtazbanu Mohammadbhai Shaikh, on the count of date of burial itself the latter document produced becomes doubtful. Thus, it is clear that though no documentary evidence is produced on record by the prosecution about the death of Mumtaz, in the fact of the case this Court opines that the identification panchnama creates sufficient evidence to hold that Mumtaz Noorbhai died in the incident on account of the attack in the occurrence by burn injuries. This is clear as identification panchnama Exh.219 there is mention of three women of Patiya area from where the dead bodies were found. Hence, considering the place of finding the dead body, it is clear that in fact two Mumtazbanus had died one is Mumtaz Noorbhai and another is this Mumtaz Mohammedbhai.

(3-6) Exh.348 is produced by the prosecution as the PM of Hajrabanu alias Jadikhala Abdulla, resident of Lane No.4, Hussain Nagar. But, the PM seems to be based on the endorsement of PW-285 which does not inspire confidence of this court.

(3-7) Exh.348 is the PM wherein there is mention of ornaments which have been found on her internal examination. The said ornaments could have been identified and moreover the statement of Jabbar Jamalbhai could have helped the prosecution but no such exercise seems to have done by any of the investigating agency. However from the identification panchnama and from the other oral evidences like of PW-158

which shall be discussed later in another chapter, the death of Jadikhala alias Hajrabanu is believed to have been occurred due to the incident, on the date, time and place of the incident of evening at *khancha* / Water Tank.

(3-8) Exh.866 is the PM report which is shown to have been of the dead body of Lalbi W/o Abdul Majid. This is also linked with the death of Lalbi by an endorsement of PW-285. In spite of the fact that, Jabbar who was brother-in-law of deceased, has identified the dead body, the document attempted to have been shown as Postmortem of Lalbi is of unknown dead body. It cannot be the PM of Lalbi mainly for the reason that the date of receipt of the dead body is 1st March, 2002 whereas identification panchnama Exh.219 shows the deceased to have died on 04/03/2002 and the dead body as per the identification, was identified at Kalindri Masjid.

(3-9) PW-85 has heard about death of his mother Mumtazbanu to have occurred in the evening incidents near water tank or *khancha*. According to him his sister has informed him about the death. Hence, his evidence about the death of his mother is since hearsay evidence, let us see the deposition of PW-198.

(3-10) PW-198 Harun states that the name of his mother is Mumtazbanu. In the evening incidents near Gopinath and Gangotri, his mother named Mumtazbanu had died. The witness himself was present there. His evidence is that of an eyewitness which sounds to be natural and credible.

(3-11) At the cost of repetition it is clear that in this case

the court can only rely upon the substantial oral evidence of the victim themselves and of the relatives of the deceased victims other evidences are full of doubts and is at least not dependable and faithful record.

(3-12) PW-106 is an eye witness of the death of her mother Mumtazbanu as has been stated by her in para-11. PW-85 refers this PW in his evidence.

However, the oral evidence of PW-85, 106 and 198 shall be appreciated at an appropriate place in the judgement. At present it needs a note that mother of these PW is not Mumtaz Noorbhai.

(3-13) There is no use of appreciating of evidence of PM Doctor when the PM note is without the name of the deceased which itself is not inspiring confidence of the court. It would be just and proper to record tremendous displeasure of this court for the manner in which the investigating agency, the Hospital agency have kept their record. It is firmly but humbly opined that it is not at all safe and prudent to adjudicate basing upon such unreliable, polluted and the on record which is not faithful.

(3-14) PW-156 in his deposition states in para-19 to have seen his wife Lalbi being burnt at the khancha viz., water tank occurrence in the evening incident of the date, time and place.

(3-15) PW-158 is also an eyewitness of the khancha incident viz. water tank occurrence where Jadikhala alias Hajrabibi and her family members were burnt alive.

FINDINGS OF THE DEATH OF Lalbi Majidbhai W/o Abdul Majid, Hajrabibi alias Jadi Khala and Mumtaz Noorbhai (Death Nos.21, 22 & 23) - EVENING OCCURRENCE :

In light of the above incidents it is held that the death of Lalbi, Jadikhala and Mumtaz had occurred because of the injuries sustained in the evening incidents at Khancha viz. water tank by them on the date, time and site of the offence.

4. Death of Zarinabanu Bundubhai and Nasimbanu Bundubhai (Death Nos.24 & 25) :

(4-1) Exh.2041 is the identification panchnama of Zarinabanu and Nasimbanu which was drawn at Kalindri Masjid on 05/03/2002.

(4-2) The PM notes at Exh.585 at Exh.619 are respectively shown to be of Zarinabanu and Nasimbanu but, both these PM notes were originally titled as unknown dead bodies and PW-285 and/or his office has connected the name of the two deceased by endorsing their names on the top of PM.

(4-3) Upon scanning, it is learnt that in both these incidents the dead bodies were noted to have been received on 01/03/2002 as noted in the PM note. The dead body is shown to have been found from the hutments of Jawahar Nagar whereas, the inquest is saying other way round. In short according to the Inquest, both these women died on 5th March, 2002 and according to these so called PM notes their dead bodies were received on 01/03/2002 for PM. How it is possible ? The reply

is pure and simple that this is one more glaring example of most unreliable and bogus record maintained by the hospital and attempted to be shown to be genuine record by the Crime Branch.

In light of the above facts no fruitful purpose would be served by referring the oral evidence of PM Doctor.

(4-4) The deposition of PW-212 is on record who is an eyewitness, who only needs to be believed as proof of death of Zarinabanu who was killed in front of her eyes.

FINDING ON DEATHS of Zarinabanu Bundubhai and Nasimbanu Bundubhai (Death Nos.24 & 25) :

It stands proved beyond reasonable doubt that Zarinabanu Bundubhai and Nasimbanu Bundubhai had sustained fatal burn injuries which caused their homicidal death on the date, time and place of the occurrence.

5. FINAL CONCLUSION ON THE CHAPTER OF P.M., INQUESTS, YADIS AND CONCERNED PWS AND DOCTOR P.M. etc. :-

(a) Upon perusal of the entire record discussed herein above, upon appreciating the documentary evidences, the circumstantial evidences and the oral evidences, this Court is of the view that the homicidal deaths of following persons whose dead bodies were identified had occurred on account of the fatal burns and other injuries they have sustained in the occurrence, at the time, date and site of the occurrence by the

accused who were present there. The deceased succumbed to death during the treatment at the hospitals or on the spot itself.

(b) Different panchnamas and identification panchnamas prove death of the deceased in occurrences on the date, time and place. For some of the deceased, in fact, no witness has been examined but then, the inquest panchnamas have been perused to conclude the cause, time, date and site of the deaths. At the end, it has been established that in the morning occurrence, many violent mobs have burnt shops, cabins, carts, attacked Nurani Masjid, did private firing and even the houses were also burnt. Thus, the injuries while the deceased were in houses if had been caused before 11:30 a.m. or 12:00 noon, the same would be obviously connected with the morning occurrence and that if the attack on the dwelling house if has been done after 12:00 or if the injuries have been sustained considering that the same injuries and the resultant death can be connected with the noon occurrence, as, in both the situations, the documents speak for themselves. Those who had sustained fatal injuries in the morning and noon occurrences while they were inside their houses and when the violent mob has burnt their houses, such injuries were held to be fatal injuries and can clearly be connected with murder. It was even attempt to murder since after sustaining the fatal injuries, the deceased succumbed to the said fatal injuries. Hence, intention to kill and knowledge that during the process those who were inside the dwelling houses would die is too clear and can safely be inferred. Certain deaths can also be connected with the evening occurrence. More particularly, in the evening occurrence, at one place itself, about 58 persons had died and

that, the inquest panchnama at EXH.662 on the record of the instant case proves death of 58 victims at Khancha.

(c) Keeping in mind the above discussion, the following findings are jotted down to conclude as to which deaths were caused in which occurrence.

(c-1) As per the contents of the inquest panchnama at EXH.210 (of deceased Shakina Babubhai), EXH.232 (of deceased Razzak Babubhai), EXH.2021 (of deceased Mohammad Shafi Alam) and EXH.2075 (of deceased Shakina Mehboobbhai) - the inquest panchnamas reveal that these injuries were sustained during the morning occurrence which can be linked with attempt to murder and that since these deceased persons then after, succumbed to the injuries, their deaths are held to be the murders caused in the morning occurrence. Hence, all those who were members of unlawful assembly in the morning are held to be the authors of these murders and attempt to murder of the above named deceased victims.

(c-2) As has come up on record, during the noon hours, many Muslim chawls were burnt entirely. As a result, many dwelling houses were burnt alongwith live victims inside. Those who died in these occurrences were then after, found from hutment of Jawannagar. Many such dead bodies were fround from the hutments of Jawannagar and some of them were also admitted in the hospitals who then succumbed to the fatal burns injuries sustained by them. EXH.192, 194, 205, 402, 937 and 1333 are such inquest panchnamas in which dead bodies of males, females, children and human remains were found from the Jawannagar inside the dwelling houses. This kind of occurrence

has proved to happen mainly in the noon and that these are the deaths which can safely be connected with the noon occurrences as, the record so suggests. This can be the only logical inference which can be drawn from these documentary evidences. EXH.212 is the panchnama of the dead body of Mehboob Khurshid Shaikh which is an identified dead body. In all these cases, there were attempt to kill by flames of fire while the deceased were inside the houses. In the P.M. Notes, the carbon particles have been found in the trachea which were opined, according to the doctors, as symptoms which show that the deceased persons had died due to burns while inside the closed area. These deaths are undoubtedly the deaths which occurred in the noon occurrences for which, the members of the unlawful assembly of the noon should be held as the authors of these crimes.

(c-3) The inquest panchnamas EXH.662, 203, 1333, 207, 214, 221, 224, 1454, 2062, 2064 and identification panchnamas EXH.1303 and 2041 are all the documents which prove the deaths of many deceased in the evening occurrences which, if read with testimonies of different PWs, these deaths can safely be connected with the evening occurrences. Those who were members of the unlawful assembly in the evening time, are held to be the authors of these murders.

(d) It is needless to state that all these deaths are, neither accidental nor natural, looking to the injuries sustained by all of them, which are apparently meant to kill them, certainly goes with the finding of these deaths to be homicidal deaths. Burning the live persons is the known modus to kill the persons beyond any doubt. When the accused have chosen this mode, it

can safely be inferred that the accused had common intention to kill and that the accused had also sufficient knowledge that during the process, the victims who were inside the burning houses would certainly be killed. Considering this, all these deaths are proved to be murders caused in different three occurrences, considering which, all those who were forming the unlawful assembly as its member, in any of the occurrence, have all been held guilty for these murders, without any exception.

(e) In the same way those who were injured during the process were victims of the offences u/s.323 to 326 and 307 of the Indian Penal Code. The injuries sustained by them were since sufficient to kill them and since in these injuries, their different limbs were found missing as can be seen from these panchnamas, the offences satisfy the requisite of offences punishable u/s.323 to 326 and 307 of the Indian Penal Code. All those, who were members of unlawful assembly in any of the occurrence, are therefore, uniformly liable for all these offences since, all these offences were committed in every occurrence. In this view of the matter, all the accused who were members of the unlawful assembly are hereby held guilty even for the offences committed by them u/s.323 to 326 and 307 of the Indian Penal Code.

A. Conclusion on A : -

In fact, 13 dead bodies were identified. Their names are as under:

1	Mohammad Shafiq Adam Shaikh

2	Saidabanu Ibrahim Shaikh (Sister of PW 158)
3	Jubaidabanu Shabbirahmed Shaikh (sister-in-law of PW 72)
4	Kudratbibi Khurshidbhai (Mother of PW 72)
5	Sarmuddin Khalid Noormohammad
6	Asif Shabbirbhai
7	Supriya Marjid
8	Hamidraza Mohammadmaru
9	Shakinabanu Mehboob
10	Shakina Babubhai Bhatti
11	Razzak Babubhai Bhatti
12	Sufiabanu / Sofiabanu Majidbhai Shaikh
13	Mehboob Khurshidbhai Shaikh (Brother of PW 72)

Note: For the clarity these are death Nos.1 to 13.

B. Conclusion on B:

Death Nos.14 to 25 are listed herein below, which is as conclusion of discussion done under the head of Item B:

14	Moinkhan / Soinkhan
15	Salambhai Abdullah Qureshi (brother-in-law of PW 90) death witnessed by PW 158.
16	Reshma Salambhai Qureshi
17	Samir Salambhai Abdullah
18	Imran Salambhai Abdullah
19	Mehraj Salambhai Abdullah
20	Hussain Mohammed Masik Qureshi
21	Lalbi Majidbhai Usmanbhai
22	Hazrabanu alias Jadi Khala
23	Mumtaz Noorbhai
24	Zarinabanu Bundubhai Qureshi
25	Nasimbanu Bundubhai Qureshi

Note: For the sake of clarity these are death Nos.14 to 25.

C. MISSING PERSONS : (Death Nos.26, 27 & 28) :

1. According to prosecution case, three persons were missing persons. They are as under.

(1) Madinabibi Babubhai Bhatti,
(2) Babubhai Abdul Rasul Bhatti and
(3) Mohammad Shakil Abdul Alim Chowdhary

2. The fact that there is inquest panchnamas identifying one, Razak Babubhai Bhatti, aged about 13 years and Shakina Babubhai Bhatti aged about 22 years it stood established that there was Bhatti family residing at Naroda Patiya. The two children who were identified had sustained burns injury whose name is suggestive that they are the children of missing persons at Sr.No.1 and 2.

3. As far as three missing persons are concerned, following points are satisfactorily proved – (a) they were present on the date of the riot, (b) On the date of riot, they were seen last and then after had not been seen, (c) there is no evidence that any one of them was heard or seen by their family members who would have naturally heard about them or seen them had they been alive, (d) their dead bodies have not been found.

In nutshell, the dead bodies of the three are not found from the year 2002, the date of riot itself. All the three missing persons are not found, heard or available who came out on the date from their houses. It is not the case of either side that anyone has heard about them for last seven years and that for last seven years, none has seen them. Therefore, the presumption of their death follows.

Conclusion on C: -

Finding for Death Nos.26, 27 & 28:-

This Court therefore, presumes death of (i) Madinabibi Babubhai Bhatti (ii) Babubhai Abdul Rasul Bhatti (iii) Mohammad Shakil Abdul Alim Chowdhary in the communal riot on 28/02/2002 and the time at Naroda Patiya. In the fact and circumstances of the case since the two children of Bhatti family had died due to fatal injuries sustained in the morning and since father of Mohammed Shakil (PW-174) has seen him till evening on 28/02/2002 and then after, he was missing, he was presumed to have died in the evening whereas, missing Bhatti couple is presumed to have died in the morning occurrence.

Note: For clarity, these are referred as death Nos.26 to 28.

D. OFFENCE - WATER TANK ETC., OF EVENING OCCURRENCE, CHART OF INQUESTS AND DEATH NO.29 ONWARDS.

UNIDENTIFIED DEAD BODIES :

1. One of the peculiar features of this case is, the Inquest Panchnamas and postmortem notes of some of the deceased are on record. PW 285 has connected the name of the deceased with the PMs by hook or crook or by his guess work in a slip-short manner by endorsing the names of the deceased according to his guess work on the top of the P.M., to show that the particular P.M. Note is of so and so deceased. This exercise

sounds to be without any application of mind and seems to be to oblige the investigating agency, the Crime Branch to fill in the gap. This has created tremendous confusion and a messy picture on record which even could not be corrected or streamlined by the SIT, which may be because of the reason that the SIT has no option since they have not to re-investigate but were ordered to do further investigation.

2. Moreover, it has to be appreciated that on account of lapse of time of about six years, when the SIT took over the investigation, the hospital being Governmental or being Municipality run, it must be difficult for the investigating agency to secure the records after six years.

There may also be bend of mind of the investigating officer of the SIT, being a local officer, to not disturb or not to find out fault with any part of the previous investigation as it was done by some of his colleagues. Be that as it may, but, the previous investigating agency has, knowingly or unknowingly, did maximum distortions of record and did not remain faithful to the record of the case.

3. While trying once again to still look into the postmortem notes to verify the genuineness in the endorsement of PW-285 it was noticed that the hospital authority has gone to an extent even to add the contents in the postmortem note to get it tallied with the inquest by hook or crook. This Court has concentrated on the identification panchnama Exh.1303. This panchnama was the panchnama drawn in the PM Room of Civil Hospital wherein the dead body was identified by one Razak Usmanbhai Shaikh. In this dead body the name of Moin Khan

or Soin Khan is written. But, this identification panchnama has a peculiarity within it. It is to the effect that the dead body had iron clip as joint in the right leg of the deceased.

(3-a) As has come up on record through the deposition of PW-261 Mother, who has witnessed the death of her crippled son Maiyuddin, aged 18 years that Mayuddin was killed in the riots. At Exh. 1776/6, there is complaint on record of father Abubakkar which is R&P of "C" Summary, which clarifies that the father has filed complaint about death of his son Moyuddin. From this inquest panchnama and from the complaint of the father etc., it was clear that the death of one crippled boy named Moiyuddin had caused in the occurrence.

(3-b) In Exh.1952, the PM note, PW-285 has made an endorsement that this was body of one Moiyuddin Hasanbhai Abubakkar. Since the boy was crippled, the office of PW-285 or PW-285 or someone else has tried to add the contention in the column of "External Examination of the Dead Body". It is column No.7 in the PM report. If the entire postmortem note is perused, it is written entirely in English. Even the answer of column No.7 has also been given in English. But, in that answer, some contents have been added in Gujarati that Iron Calipers was attached on the right leg of the dead body. This is written in Gujarati and it clearly appears to have been inserted later. Even the way of writing the script, colour of ink etc. are also different. In nutshell, the point to be brought home is that to fit into the contents of the identification panchnama of dead body of Moinkhan at Exh. 1303 and to link everything with each other, this external appearance has been added. This gesture is clear unfairness on the part of the hospital

administration, which should not have been done. Here again, the identification panchnama is of 5th March, 2002 and the PM is dated 2nd March, 2002. There is nothing on record to show that the deceased, Maiyuddin was undoubtedly identified on 5th March, 2002 when Exh.1303 was drawn. The person who has identified the dead body, has not been examined, it is also not known who was that person. As it may be, but When the insertion is clearly later insertion and that too in another language viz., in Gujarati language, when the entire PM is filled in English language, it is more than clear that several efforts have been made to fill in the lacunae in the previous investigation by different authorities. Investigating authority, hospital authority and/or others have duty to play their role which should be purely aimed to search out the truth. But here, such role has not been played and the hospital administration and even the previous investigating agency have cut a sorry figure.

(3-c) Moreover, PW 261 is the mother of Maiyuddin who states that her son was 18 years old, as against that PM Note Exh.1952 attempted to be shown as P.M. of Moiyuddin has endorsement on endorsed as P.M. Note of Maiyuddin shows that the dead body was aged about 32 years. While doing this distorted insertions, additions and tampering the hospital authority forgets that after death, Moiyuddin aged 18 years cannot become aged 32 years.

(3-d) This is one more glaring illustration which is guiding this Court that, in any case, the endorsement of PW-285 cannot be relied upon at all.

4. It is obvious that oral evidence of the relatives of the deceased or eyewitnesses of the occurrence would not tally with such guess work as it would be truth or perception or observation of the witness or understanding and reproduction of the eyewitness against the haphazard, inept guess work of the hospital authority and non application of mind of the previous investigating agency and the hospital authority.

5. This Court is of the opinion that inquest is a corroborative piece of evidence, the identity revealed in inquest is a hearsay evidence of the police, the police has no personal knowledge. Unless the relative of the deceased or from the name slip tagged by the hospital authority the identity of the dead body reveals, it cannot be believed to be dead body of a particular deceased.

6. The known procedure in such cases does not recognize the guess work of any individual as instead of searching the truth, it is direct way towards total untruth. The investigating agency should be bold enough to come out with the case that they were unable to obtain P.M. notes for particular number of deceased since they were not identified.

In such kind of man-made calamities, and mass casualties such difficulty comes, it cannot be forgotten that to prove murder there is no need of finding out the dead body.

Instead of taking the way which leads to untruth, the truth should have been placed before the Court which would have been appreciated by this Court.

7. As it may be, but this Court is of the firm opinion that not only the record of previous investigating agency, but even record of Civil Hospital p.m. in case of unidentified dead body where later name of the dead body was endorsed, is not worthy to any credence and the Court is absolutely unable to accept such unrealistic ways which can never help the Court in search of truth.

8. This Court has therefore, found it just, proper, equitable and thoroughly in accordance of principles of justice and good conscience that only oral evidence of the relatives or acquaintance of different deceased victims and of the eyewitnesses shall be depended to adjudicate the matter rather than depending on guess work.

Even the circumstantial evidence on record and documentary evidences on record of police or record of Civil Hospital can also be depended if it inspire the confidence of the Court.

9. The injuries in different PMS of identified persons and even in the PM notes collected by the investigating agency have been opined to be ante-mortem in all cases which proves that the deceased were assaulted first and then had been set on fire before their death.

10. In case of burns, no blood would be found on body. Since the deceased died of flame burns, there is no question of residues of kerosene. Looking to the heat generated which took lives of many, it is impossible to have residue of kerosene. This opinion is with reference to the cross-examination of many of

the PM doctors who have admitted of `no odour or smell' found on the dead bodies or clothes. As discussed, it is natural hence true. Moreover, since not sent to FSL no question of noting smell in the clothes.

11. From cross-examination nothing has come out to suggest that there were no burns symptoms over the body and no smoke of carbon particles in the trachea. There is nothing in cross to hold that the deaths were not due to burns, the fatal injuries sustained by the deceased were not on account of the communal riots took place at Naroda Patiya on the date, place and time and that the said fatal injuries were not proximate and direct cause of the death of the deceased. Considering it, this Court is of the opinion that all those deaths which are proved in the oral evidence of eyewitnesses and which are proved from the postmortems of unidentified dead bodies had been caused on account of the killing, cutting, torching committed in the communal riot at Patiya on 28/02/2002.

12. The memorandum of the postmortem examinations and the burial receipts are of the dates after the occurrence hence, can safely be connected with the occurrence if so stand proved. It is becoming clear that the unidentified dead bodies of the persons had also died an unnatural and homicidal death as a result of burn injuries. The burns injuries were sustained on account of the fire that had been set by the mob on the day of occurrence. This aspect is satisfactorily established by the prosecution if yadis, inquest panchnamas and oral evidence of different PWs are perused together.

13. In a case where only PM report is on the record placed by

the investigating agency, it reveals that this document proves the death of the said person. This is clearly a homicidal death caused in the occurrence and on the date, place and time of the occurrence, if all the columns of the said PM are studied. Hence, such death is also held to have been caused in the occurrence as discussed. This is with reference to the death, the PM for which is at Exhs.389 & 391 (twice exhibited at the instance of the defence) and which PM has been proved by PW-46, the PM doctor.

In the same way and in the same circumstance, the PM Exh.776 proved by PM Doctor PW-120 for which no inquest is on the record is also one more Death in the case.

14. There are following inquest panchnamas and/or dead body identification panchnamas prepared by the respective investigating agency for the dead bodies, which were found at the site of the occurrence like of the khancha or water tank and other Muslim chawls at the site. It needs to be clarified that :

(a) From the very tenor and frequent use of the word "Jawannagar Chhapara" (Hutment or huts or roofs of Jawannagar) in these inquests is for almost every part of the site of the offence, it emerges that the concerned officer of the first investigating officer has mentioned all chawls, the water tank area nearby Jawannagar as Jawannagar instead of specifying near water tank or below the hollow place of the water tank situated between Gangotri Society and Gopinath Society or Jawannagar Chawli Nos.1, 2 & 3 or 4, as the case may be. If the description in inquest panchnama Exh.1333 and others are seen, it is clear that the police officer refers

"Jawannagar Chhapra" for the area near Bungalow No.32 of Gangotri Society. This strengthens the observations of this Court about the perception emerges from the inquests prepared by him about site of offence. In fact, the inquest panchnama, if read collectively, speak for itself that Jawannagar na Chhapra is the area is also inclusive of *khancha* below the area of water tank.

(b) In light of the foregoing discussion the general word Jawan Nagar should be understood as site of the offence.

(c) The word Chhapra is used for roof. If the depositions of some of the victims or relatives of deceased victims are seen, then, it becomes clear that the main site of occurrence of the massacre at the evening was between Gangotri Society and Gopinath Society, which is very much adjoining to Jawan Nagar.

(d) PW-191 on page-11 of his testimony states it to be the place at Gangotri Society. Page-10 of his testimony clarifies it to be exactly between shops and space of water tank. Para-27 shows there was wooden cabin as well. At page-55 para-104 clarifies that before SIT this PW-191 has clarified that the site of mass torching was at Gangotri Society and Gopinath Society where water tank is situated and at para-116 he confirms the site again.

(e) Some another PW specifies that the site was a hollow space or *khancha* covered from three sides.

(f) Thus in nutshell, *khancha*, water tank, Jawannagar Na Chhapara, between Gangotri and Gopinath or between shops

and Gangotri at the void space etc., are all different descriptions of the same site.

15. The inquest panchnamas of the known dead bodies are in all 12 whereas the inquest panchnamas of the unknown dead bodies are 7.

Some of the inquest are drawn on the name of the deceased which have been mentioned separately in the chart and some of the inquest are for unknown dead bodies. 12 dead bodies are by name and others are unidentified dead bodies, however, in many cases on 4th March or 5th March, the relatives have identified the dead bodies and in such cases, the identification panchanamas have been drawn.

16. In the previous Chapter, a short note of inquests on record has been written but, here a chart of it, with all details, is placed on record to link 81 deaths, as were occurred, in the different occurrences spread on the entire day of 28/02/2002 in the communal riot at Patiya. The chart of the said inquest panchnamas is placed on record as ready reference.

Sr. No	Inquest Panchnama Exh.	Date of Panchnama	Place of the Panchnama	Sex				
				Male	Female	Children	Unidentified sex	Total persons
	INQUEST PANCHNAMA WITH NAME OF DECEASED							
1	203	02/03/02	PM Room of Civil Hospital.		1 (Saidabanu)			1
2	207	11/03/02	PM Room of Civil Hospital.			1 (Hamidraza)		1
3	210	10/03/02	PM Room of		1			1

Sr. No	Inquest Panchnama Exh.	Date of Panchnama	Place of the Panchnama	Sex				
				Male	Female	Children	Unidentified sex	Total persons
			Vadilal Sarabhai Hospital.		(Shakina Bhatti)			
4	212	05/03/02	PM Room of Vadilal Sarabhai Hospital.	1 (Mehboob Khurshid)				1
5	214	04/03/02	PM Room of Civil Hospital.			1 (Asif)		1
6	221	07/03/02	PM Room of Civil Hospital.		1 (Supriya Margid)			1
7	224	05/03/02	PM Room of Civil Hospital.	1 (Sarmuddin)				1
8	232	11/03/02	PM Room of Vadilal Sarabhai Hospital.	1 (Razzak Bhatti)				1
9	1454	05/03/02	PM Room of Civil Hospital.		1 (Kudrat bibi)			1
10	2062	01/03/02	PM Room of Civil Hospital.		1 (Sofiyabanu)			1
11	2064	01/03/02	PM Room of Civil Hospital.		1 (Jubaida banu)			1
12	2075	04/03/02	PM Room of Vadilal Sarabhai Hospital.		1 (Shakina Mehboob)			1
	INQUEST PANCHNAMA WITHOUT NAME OF DECEASED							
13	192	01/03/02	Jawan Nagar			1		1
14	194	01/03/02	Kot ni Rang, Jawan Nagar Chhapra	1		1		2
15	205	02/03/02	Jawan Nagar Chhapra, Beside S.T. Quarters	1	1		1	3
16	357 & 937 (as	04/03/02	Jawan Nagar Chhapra		1			1

Sr. No	Inquest Panchnama Exh.	Date of Panchnama	Place of the Panchnama	Sex				
				Male	Female	Children	Unidentified sex	Total persons
	exhibited twice)							
17	402	02/03/02	Compound of House in Hussain Nagar	1				1
18	662	01/03/02	Jawan Nagar Chhapra, Behind S.T. Workshop	16	14	12	16	58
19	1333	01/03/02	(1) Jawan Nagar Chhapra, (2) Front side of Bungalow No.32 of Gangotri Society		2	1		3
			TOTAL (A)	**22**	**25**	**17**	**17**	**81**

17. From the above chart, it is clear that for about 12 dead bodies, inquest panchnama for the named dead bodies were drawn.

Where, as far as about 69 dead bodies, the inquest panchnamas for unidentified dead bodies were drawn. From among these 69 dead bodies, 58 dead bodies were found from Khancha / water tank itself. This tallies with the death of 58 victims at Khancha whereas, other dead bodies were lying in the surrounding area. This all, totally tally with the oral evidence of many of the victims and relatives of the deceased victims - which all has been discussed at Part-5 of this judgment.

18. The inquest panchnamas on record shows inquest to have been drawn for 81 dead bodies at the site of the offence or at

P.M. Rooms of the hospitals. In every inquest panchnama the reason of death is opined by the Police Officer and panchs to be death due to burns in the riot. All these inquest panchnamas have been drawn by Naroda Police Station and the dead bodies were either sent to hospital or the Muslims of Patiya who were admitted in the Hospital for the treatment on account of the injuries sustained by different victims died during the treatment. Some of the dead bodies were found from the site of the offence viz. different Muslim chawls which were also sent by the Naroda Police to Hospitals for the postmortems.

19. Moreover, over and above the above mentioned panchnamas, the identification panchnamas like Exh.219, 1303, 1349, 2041 etc. were drawn. Exh.1349 is an identification panchnama drawn when Jaidabibi alias Ghoribibi identified her seven family members. Whereas, Exh.177 is the panchnama by which ornaments were recovered from the dead body of unknown woman. Thus, in nutshell, different panchnamas were drawn, which can safely be connected with the unidentified dead bodies.

20. The unidentified dead bodies mentioned in different inquest panchnamas and/or identifying panchnama were since found from the place, date and at the time immediately after the ghastly offence of massacre was committed, it is suggestive of very strong circumstance that those deaths were caused in the occurrence of that day.

21. Death No. 29 onwards : Upto the figure of death of 29 persons, four deaths were presumed by the Court including the three missing persons and of Mumtaz Noorbhai as was

clear from panchnama Exh.219. There is no P.M. but, the inquest helps in proving death of Mumtaz.

22. In all 81 P.M. Notes are on record as is in the material collected by the Investigating agency and proved and exhibited through the prosecution witnesses. Even in the case of these unidentified dead bodies, it is clear that all the dead bodies were sent from Naroda Police Station. The P.M. of the dead bodies concerned with the Naroda Gaam Case were sent to Naroda Gaam and it formed R & P of that case. In these circumstance, it can safely be presumed that the 81 P.M. on the record of this case is suggestive of 81 deaths in the Naroda Patiya occurrence which are even proved by the inquest panchnamas in all drawn for 81 deceased.

Moreover, some more deaths have also been occurred like that of missing persons and the deceased whose burial receipts have been produced. Since the postmortems have been collected in this case and since it tallies with the figure mentioned in inquest panchnamas wherein inquest for 81 dead bodies have been drawn, it seems that it would be just and proper and in accordance with the principles to appreciate circumstances on record to hold that the persons having descriptions in different panchnamas who were identified with their sex and some of them were falling in the categories whose even sex was also not identified, can be held to have been died in the riots at Naroda Patiya, as their death can lawfully be presumed by the Court. They have neither been heard nor been seen for last more than seven years.

Thus, the death toll goes to 85 as 81 postmortems of

deceased victims are there and in the 4 cases where the Court has presumed that they died in the occurrence of the day at the site and time of the occurrence.

For the 4 death cases, there is no postmortem notes, so including the unidentified dead bodies, in all death were of 85 persons.

23. It needs a note that the PM Report of deceased accused No.1 - Gulab Vanzara and deceased accused No.2 - Deepak Koli have not been appreciated since are not belonging to the victim of this case. One of the PM Note of deceased Ranjitsinh who was accused in another riot case of Naroda Gam has been taken for the Record & Proceeding of that case hence, that does not formulate record of this case. Here, it needs mention that the Session Case Nos. 241/03 and 243/03 of homicidal death of said Ranjitsinh was tried against the accused including PW 213 whose judgment is on record at Exh.1532.

24. Considering the foregoing discussions, it would be fitting to enlist the description of the deceased, which are mentioned in different postmortem notes which are even tallying with the figure of the inquest panchnamas on record.

Sr. No	**Description of the deceased**	**PM. Exh.**	**PM Dr.**	**Name of Doctor**
29	Unknown female	579	95	Dr. J.H. Solanki
30	Unknown male	603	98	Dr. A.H. Thakur
31	Unknown female	604	98	Dr. A.H. Thakur
32	Unknown child / 7 years	623	100	Dr. R.S. Bhavsar
33	Unknown male	624	100	Dr. R.S. Bhavsar
34	Unknown child / 8 years	625	100	Dr. R.S. Bhavsar
35	Unknown male	617	99	Dr. K.R. Shah

Sr. No	Description of the deceased	PM. Exh.	PM Dr.	Name of Doctor
36	Unknown male	618	99	Dr. K.R. Shah
37	Unknown female	639	102	Dr. N.H. Samichhara
38	Unknown male	642	102	Dr. N.H. Samichhara
39	Unknown female	643	102	Dr. N.H. Samichhara
40	Unknown male child	1951	285	Dr. J.V. Satapara (as Dr. S.K. Patel is abroad)
41	Unknown (mohiyuddin)	1952	285	Dr. J.V. Satapara (as Dr. S.K. Patel is abroad)
42	Unknown male child	1953	285	Dr. J.V. Satapara (as Dr. S.K. Patel is abroad)
43	Unknown female child	1954	285	Dr. J.V. Satapara (as Dr. S.K. Patel is abroad)
44	Unknown male baby / 2 years	1961	285	Dr. J.V. Satapara (as Dr. M.M. Patel has died)
45	Unknown female	1962	285	Dr. J.V. Satapara (as Dr. M.M. Patel has died)
46	Unknown female / 30 years	1963	285	Dr. J.V. Satapara (as Dr. M.M. Patel has died)
47	Unknown male	1964	285	Dr. J.V. Satapara (as Dr. M.M. Patel has died)
48	Unknown female 15 years	634	101	Dr. D.S. Vyas
49	Unknown female	633	101	Dr. D.S. Vyas
50	Unknown male	404 405 (copy)	49	Dr. Kalpesh H. Parikh
51	Unknown male	787	123	Dr. Jayesh B. Rupala
52	Unknown female / 25 years	788	123	Dr. Jayesh B. Rupala
53	Unknown male child / 7 years	789	123	Dr. Jayesh B. Rupala
54	Unknown female	774	120	Dr. Mitesh R. Patel
55	Unknown male child / 2 years	775	120	Dr. Mitesh R. Patel

Sr. No	Description of the deceased	PM. Exh.	PM Dr.	Name of Doctor
56	Unknown female / 7 years	777	120	Dr. Mitesh R. Patel
57	Unknown female / 35 years	782	122	Dr. D.J. Mankad
58	Unknown female / 10 years	1943	285	Dr. J.V. Satapara
59	Unknown male 22 years	799	125	Dr. Gitanjali Falkan
60	Unknown child / 8 years	800	125	Dr. Gitanjali Falkan
61	Unknown child / 5 years	801	125	Dr. Gitanjali Falkan
62	Unknown female	657	103	Dr. J.S. Kanoriya
63	Unknown female	659	103	Dr. J.S. Kanoriya
64	Unknown male child	815	128	Dr. R.B. Joshi
65	Unknown male	816	128	Dr. R.B. Joshi
66	Unknown male	1942	285	Dr. J.V. Satapara
67	Unknown male child	1945	285	Dr. J.V. Satapara
68	Unknown male child	1946	285	Dr. J.V. Satapara
69	Unknown male child	1947	285	Dr. J.V. Satapara
70	Unknown male	807	126	Dr. D.M. Savani
71	Unknown female/25 years	821	129	Dr. J.M. Joshi
72	Unknown male 3 years	825	129 / 285	Dr. J.M. Joshi / Dr. J.V. Satapara
73	Unknown male/5years	822	129	Dr. J.M. Joshi
74	Unknown female / 5 years	862	132	Dr. A.N. Patel
75	Unknown female about 4 years	863	132	Dr. A.N. Patel
76	Unknown male	393 395 (copy) 396 (copy)	47	Dr. R.B. Shah
77	Unknown male	605	98	Dr. A.H. Thakur
78	Unknown male	804	126	Dr. D.M. Savani
79	Unknown male / 25 years	601	98	Dr. A.H. Thakur
80	Unknown male	795	124	Dr. B.S. Shah
81	Unknown female	796	124	Dr. B.S. Shah
82	Unknown male	797	124	Dr. B.S. Shah
83	Unknown male	400 401 (copy)	48	Dr. D.S. Patel
84	Unknown male	389 391	46	Dr. C.K. Tanna
85	Unknown female	776	120	Dr. Mitesh R. Patel

Finding on D : -

The persons whose dead bodies were found from the site of the offence or were sent to Hospital for P.M. as were found from the site of offence, had been presumed to have been done away in the occurrences of communal riot at Patiya.

E. DEATHS PROVED BY BURIAL RECEIPTS :-

As has come up on the record, SIT has collected some of the Burial Receipts showing that different dead bodies were buried immediately after the date of occurrence. The eyewitnesses and/or the relatives of the deceased have corroborated the fact of death of different eleven deceased in the occurrence, whose burial receipts have been produced by them on record. PM-327, the IO of the SIT has stated to have collected this material during his investigation and the relatives of the deceased have deposed about having seen the death of their relatives or acquaintance in the occurrence. The said deceased are enlisted herein below.

Sr. No.	Name of Deceased according to burial receipts	Burial Receipt Exh.	PW who proves
86	Afrinbanu Abdulmajid Shaikh	2352	156, 327
87	Tarkishbibi Abdulgani Ibrahimbhai	2353	259, 327
88	Afrinbanu Meblahussain Shaikh	2354	111, 76, 327
89	Mehboobi Vasumiya Shaikh	2355	111, 76, 327
90	Jenbibi Khalikbhai Shaikh	2356	225, 229, 327
91	Rabiyabibi Rahimbhai Shaikh	2357	156, 217, 218, 327, 106
92	Mumtazbanu	2358	85, 106, 198, 327, 106

Sr. No.	Name of Deceased according to burial receipts	Burial Receipt Exh.	PW who proves
	Mohammedbhai Shaikh		
93	Kalimuddin Ahmedbhai Qureshi	2359	324, 327
94	Ismailbhai Punjabhai Mansuri	2360	146, 327
95	Reshmabanu Iqbalahmed Shaikh	2361	93, 198, 327
96	Abdulkadar Abdulrashid Anori	2282	325, 327

Finding on E:

This shows death of more eleven victims in the occurrence. Thus, the death toll goes to 96 as has come up on the record.

25. FINDING ON A TO E :-

(a) The prosecution has examined P.M. doctor PW 102, 103, 120, 122, 123, 124, 125, 126, 128, 129, 46, 47, 48, 49, 95, 96, 97, 98, 99, 100, 101, 132 and 285 who have performed different P.M. either singly or in panel of different deceased whose dead bodies were taken at Civil Hospital by Naroda Police. The prosecution has brought on record about 68 different P.M. reports through these P.M. Doctor PW. Out of these 68 P.M. Reports, 36 P.M. are of deceased male, 25 deceased female and 7 human bodies were of unknown sex. In case of all these P.M., it is clear that Naroda Police has recovered dead bodies from the Patiya area or on account of fatal burns injuries, the deceased were admitted for treatment and have succumbed to the injuries sustained and got the P.M. done and has secured the P.M. Notes as the P.M. reports very

clearly reveal that all the deceased died homicidal deaths due to shock on account of extensive burns, the bodies were noticed to have been charred and in many cases, it was a case of 100% burns.

(b) All the injuries sustained by all the 68 dead bodies were opined by these doctors to be antemortem in nature and reading it conjointly with all the facts and circumstances of the case, inquest panchnama on record and appreciating it with the testimony of the P.M. Doctor, other victim, relatives of the victim, eyewitnesses, complainants, etc. it is very clearly establishing on record that even death of all these 68 persons were also caused on account of the occurrence of riot on 28/02/2002 at the site of Naroda Patiya.

(c) Noting the fact that 68 such unidentified dead bodies and the P.M. of the said dead bodies are on record, three persons were missing, one death is presumed of Mumtaz Noorbhai from identification panchnama, the burial receipt of 11 persons have been produced on record and there were 13 P.M. Reports wherein, the dead bodies were identified and that even those bodies were also taken by Naroda Police Station with antemortem injury which was mostly brought to Civil Hospital or V.S. Hospital for the treatment of the injuries sustained by the deceased on the date of occurrence. It is clear that death toll of 96 persons stands proved by the prosecution beyond reasonable doubt.

(d) Considering all the above discussion, the homicidal death of 96 persons clearly gets proved on record and considering the mention of one name of Mumtaz in the inquest, there

appears on record the homicidal death to have been caused of about 96 victims on the date, in the communal riot of Naroda Patiya area. The above discussion clearly establishes the prosecution case and charge of EXH.65 on record for the commission of murders of about 96 persons on the date of the occurrence.

CONCLUSION :

The murders of 96 deceased victims, whose names have been proved on record, have been enlisted at the end of Part-5 of the judgment, prove the charge u/s.302 when the deceased died during the treatment and u/s.307 when the deceased has sustained fatal injury with intention to kill existed in the mind of the assaulter, of the Indian Penal Code. All these murders and all attempts to commit murder were committed by the unlawful assembly in different occurrences, on the date, time and site of the offence. The point for determination u/s.302, 307 r/w. Sec.149 and r/w. Sec.120-B of the Indian Penal Code is answered accordingly.

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CHAPTER-III : INJURIES TO THE VICTIMS

(Point Of Determination No.IX On Offence U/s.323 to 326 of Indian Penal Code)

(A) <u>Injury certificates (Case No.1 to 32)</u>

Common Factors in all the injury certificates

(a) Almost in all cases there are burn injuries. The time of assault in some case has come up at 10:00 a.m. (like case of Razak and Shakina Bhatti), in some cases, it is 12.00 noon which goes upto 8.00 p.m. This shows that the disturbances and throwing the people in fire, burning the dwelling houses, Muslim chawls, burning Muslims had continuously done at least from 10.00 a.m. onwards.

(b) In none of the case, the doctor has opined the injuries to be grievous and/or simple injuries though there is column in the certificate itself.

(c) In many cases, age of the patient or the sex of the patient has not been written.

(d) In one of the case though the case is referred to Neuro Surgeon, the opinion of Neuro Surgeon is not on record.

(e) In all the cases, the post complications of the injuries like infection etc., is nowhere written.

(f) The addresses of all the injured persons are different Muslim chawls opposite Nurani Masjid at Naroda Patiya. It is therefore, clear that all injury certificates are related to the occurrence on that day.

(g) It has been kept in mind that in comparison with adult persons the child has less resistance power as has been opined by many P.M. Doctors.

(h) On account of detailed information in the injury certificate, even the case papers have been referred and that period of hospitalization has been given due weightage in considering whether the injury can be termed to be grievous or simple.

(i) In light of the settled position of law, the Court has decided on its own whether the injury can be termed to be simple, grievous or is it falling in the category of attempt to murder.

(j) All the doctor witnesses who have treated the injured victims at General Hospital have proved injury certificate and case papers came from the custody of the hospital.

(k) All doctors have opined that the burns injuries sustained by the respective PW is possible by burning the person after pouring or sprinkling kerosene on them.

(l) Cross of any of the doctor witness does not create any doubt against the prosecution case of all the injuries to have been caused by weapons or by burns or by both, etc. which were ante mortem.

(m) PW 71 at para. 34 states that grievous injury means life threatening injuries and fracture.

(n) Almost all the witnesses were victim of the incident of Water Tank between Gangotri Society and Gopinath Nagar.

(o) Some of the witnesses were injured eyewitnesses of

different occurrences right from 10:00 a.m. to 08:00 p.m. Most of them have given history of the incident. It cannot be expected that in general hospitals, all detail history given by the injured would be taken note of. Hence, it is quite probable that even if the injured are knowing the name of the accused and even if he would tell it to doctor, the doctors at General Hospital would not take note of such incident and that too in the situation of riot when the rush is unprecedented it is just not proper.

(p) All the injury certificates and medical case papers of the respective eyewitness have been proved by the doctors and that in each case, they have given their opinion as to with what weapon or under what circumstances, the kind of the injury sustained by the victim is possible.

(q) This part proves that offences against human body were committed right from 10:00 a.m. and were spread over in the entire day.

(1) Case of Shafi Bablu Mehboobbhai, aged 7 years, male, resident of Patiya :

(a) Exh.507 is the injury certificate wherein it is clear that the PW was an indoor patient from 01/03/2002 to 19/04/2002.

(b) Treated by Dr. Sunil R. Mittal (PW-71) who opines that the injury is of before 48 hours. This replies the cross questioning on the age of injury.

(c) History of patient of 'caught fire while escaping from the house, which was set on fire by opposite party', assault was at

Badarsinh-Ni-Chawl on 28/02/2002 at about 05.00 p.m.

(d) As per the injury certificate, the patient has sustained burn injuries who had to be kept in the hospital for about 54 days, he had 11% burns. It seems that he was admitted after about 12 hours of the injury. Exh.509 is the compilation of case papers.

(e) It seems that since he is a small child who had to be kept in the hospital for 54 days, the injuries which he had sustained must be of serious nature. The stay of 54 days shows that there must be some complications to the child and that, that added to the seriousness considering which, the hurt sustained by the child needs to be treated as grievous hurt.

Finding of the victim, Shafi Bablu Mehboobbhai - Noon Occurrence :

He had sustained grievous hurt in the riot, on 28/02/2002, time and place in the noon occurrence when at 05:00 p.m., his house at Badarsinh-Ni-Chal was burnt by the mob.

(2) Case of Yasin Abdul Majid, male child, aged 8 years:

(a) Exh.504 is the injury certificate. He was an indoor patient for the period from 01/03/2002 to 19/04/2002.

(b) History of 'burns by opposite party at 5:00 p.m. of 28/02/2002' who was taken to V.S. General Hospital.

(c) The witness was examined by Dr. Sunil Mittal, PW-71. PW-

156 is his father of the victim who had given the deposition in support of the prosecution case. Exh.506 is the compilation of case papers. PW 71 opines the injury to be of 48 hours before. He diagnosed the patient to have sustained 20% superficial to deep burns and respiratory burns over both upper and lower limb and face.

(d) PW 156, father of the victim supports the prosecution case of Water Tank, occurrence and injury therein to his son.

(e) The patient is a child aged 8 years who had to be at the hospital for about 50 days as indoor patient. He has sustained burns of 20%. According to Doctor, the burns are deep burns and on both upper and lower limb, looking to the age of the child, this has to be held as grievous injury.

Finding of victim, Yasin Abdul Majid - Evening Occurrence:

He has sustained grievous hurt on the date, time and place in the evening occurrence of water tank in the riot. PW 156 and the victim are the eyewitness of the evening occurrence of Water Tank.

(3) Case of Shehnazbanu Munavar, Exh.281, aged 35 years, female, resident of Saijpur :

(a) She was an indoor patient from 10/03/2002 to 17/05/2002. PW-39 is the Doctor and PW-155 herself was a patient. PW 155 supports the contents of her injury in her testimony.

(b) History of burns by opposite party on 28/02/2002 at 06.00 p.m. by throwing petrol over back and then set ablaze. Exh.282 is the compilation of case papers.

(c) PW 39 deposes that Shehnazbanu was treated with plastic surgery treatment. She has sustained 13% superficial to deep burns on right upper limb and on chest.

During the cross, the information in form of explanation has been elicited that no odour and petrol was noticed as she came for treatment after ten days of private treatment. This does not create any doubt on the fact of the injury of the victim in the riot.

(d) The patient had to be indoor for about 67 days who had 30% burns, which are superficial to deep burns at right limb and chest. Considering the period of stay, this is to be treated as grievous injury. Moreover, considering the area of burns of chest also, the injury and the hurt is undoubtedly grievous hurt.

Finding of Victim Shehnazbanu Munavar - Evening Occurrence :

She has hurt grievous injury in the riot on the date, time and place in the evening occurrence. She is injured eyewitness of the occurrence of water tank.

(4) Case of Bashir Ahmed Mohammad Hussain Shaikh / Bashir Ahmed Dobhi, Male - aged 45 years :

(a) Injury Certificate is Exh.334. The patient was hospitalized from 28/02/2002 to 08/03/2002. PW-43 is the Doctor and PW-207 and PW-234 have been examined. It seems that PW-207 is himself who states to have been hurt in the noon incidents. PW 234 states that his father had sustained injury on that day.

(b) The patient had stab injury on right back and sustained fracture in four ribs. It seems that in fact his injury is grievous in nature but, as can be seen from Exh.334, he has left from hospital. Multiple abrasions of a size 10' x 0.5 cm.

(c) The history of the case is that some scuffling has taken place at Patiya. Exh.335 is the compilation of case papers.

(d) Looking to the kind of injuries sustained by the patient, it is not possible that he can be cured within such a small duration. The fact that he ran away from the hospital does not go against him. It is possible that out of fear or even to change the Doctor he might have left the hospital. Be that as it may be, but the fact remains that he has sustained fracture which is grievous hurt.

Finding of Victim, Bashir Ahmed Mohammadhussain Shaikh / Bashir Ahmed Dobhi - Noon Occurrence :

He has sustained hurt, grievous injury in the riot on the date, time and place and he was injured eyewitness of the noon incident.

(5) Case of Aishabanu Mohammad Maru Pathan, - female, aged 8 years :

(a) Injury Certificate is Exh.340 This witness was hospitalized on 28/02/2002 upto 12/04/2002 and on 12/04/2002 the patient was not discharged by the hospital authorities but, as is noted in Exh.340, on the request of the father of Aishabanu she was discharged on 12/04/2002.

(b) History was given by her father, which has been noted down. According to history 'by pouring petrol or kerosene on 28/02/2002 at 6.00 p.m. she was burnt.'

(c) She has been diagnosed to have sustained second to fourth degree burns on chest, upper limb, face, etc. It was diagnosed to be thermal burns of 30%. Exh.341 are her case papers.

(d) PW-43 is the doctor. Supporting witnesses PW-191 - father of the injured. PW 191 supports the fact of injury to Aishabanu and about the fact that she had to be admitted in Civil because of the injury sustained in the riot.

(e) Looking to the stay of 42 days, age of the child to be 8 years, the fact of 30% burns to a small child and even further noting that even after 42 days she was not discharged by the hospital authorities, but her father had to seek for discharge, if seen cumulatively, the burn injuries sustained by the child can be put in the category of grievous hurt.

Finding of Victim Aishabanu Mohammad Maroo Pathan - Evening Occurrence:

She did sustain grievous hurt in the riot on the date, time and place in the evening and she and her father are injured eyewitness of the evening incident of Water Tank.

(6) Case of Afsanabanu Rehmanbhai Saiyad, female, aged 19 years :

(a) Injury Certificate is Exh.342 -This patient was an indoor patient from 28/02/2002 to 12/04/2002, history was given by Afsanabanu, which was to the effect that on 28/02/2002 at about 6.00 p.m. by throwing petrol and kerosene she was burnt.

(b) It was diagnosed that 2 - 3 degree burns were sustained on both the upper and back limb. It was further opined that the burns were 35%. Exh.343 is the compilation of case papers.

(c) PW-43 is the doctor and PW-160 is patient herself. PW 160 supports the contents of her injury certificate and water tank incident.

(d) Looking to the stay of 42 days at the hospital, looking to the fact of 35% burns, this seems to be a case of grievous hurt.

Finding of Victim - Afsanabanu Rehmanbhai Saiyad - Evening Occurrence:

She did sustain grievous hurt in the riot on the date, time and place in the evening and PW mother and victim are eyewitness of the evening incident of Water Tank.

(7) Case of Shabbir Ahmed Munir Ahmed Shaikh, male,

aged 17 years :

(a) Injury Certificate is at No.344. The patient was an indoor patient from 28/02/2002 to 12/04/2002. PW-43 is the Doctor. PW-159 is himself who has been examined.

(b) History : On 28/02/2002 at 06.00 p.m. at Naroda burnt by pouring petrol, oil and kerosene.

(c) He was hospitalized from 28/02/2002 to 12/04/2002. The patient has been diagnosed to have sustained first to third degree burns on left lower limb having 15% thermal burns. Exh.345 is the compilation of case papers. PW 43 – Doctor proves it.

(d) PW 159 deposes that he was given hockey blow in the evening near Water Tank and he was also burnt.

(e) The patient had sustained 15% burns on one side of limb but considering the age of 17 years and the stay of 42 days in hospital, it seems that there also must be some complications followed considering which the injury can be assessed as grievous injury.

Finding of Victim Shabbir Ahmed Munir Ahmed Shaikh - Evening Occurrence:

He did sustain grievous hurt in the riot on the date, time and place in the evening and PW himself is the injured eyewitness of the evening incident of Water Tank.

(8) Case of Naimuddin Ibrahim Shaikh - Male aged 35 years :

(a) Injury Certificate is at Exh.362. This patient was admitted in the hospital from 28/02/2002 to 06/03/2002. PW-44 is Doctor, PW-158 is himself who has been examined.

(b) He has history of burns wherein he has stated before the Doctor that at about 6.00 p.m. at Naroda Patiya he was burnt because of kerosene and petrol.

(c) He has sustained burns on back upper limb and abdomen. Exh.363 is the compilation of case papers.

(d) The patient has 15% burns and that is superficial burns. Considering the facts and circumstances and the opinion of the Doctor, it can be put in the category of simple injury.

Finding of Victim Naimuddin Ibrahim Shaikh :

He did sustain simple injury in the riot on the date, time and place in the evening and PW himself is the injured eyewitness of the evening incident of Water Tank.

(9) Case of Farzanabanu Aiyubkhan Pathan - Female - aged 30 years :

(a) Injury Certificate is at Exh.366. Had to be hospitalized from 28/02/2002 to 27/03/2002, PW-44 is Doctor and PW-106 is the patient herself.

(b) History is of at 6.00 p.m. at Naroda Patiya burnt by kerosene. PW 106 supports the contents of burns injury to her.

(c) The burns were on both the upper limbs and back side of the chest. She had to be hospitalized for 30 days. It is opined that she had sustained 30% thermal burns. Considering the injury certificate, she can be put in category of grievous hurt. Exh.367 is the compilation of case papers.

(d) Considering the stay at the hospital for 30 days and 30% burns on upper limbs and back side of chest, this seems to be grievous hurt.

Finding of Victim Farzanabanu Aiyubkhan Pathan - Evening Occurrence :

She did sustain grievous injury in the riot on the date, time and place in the evening and PW herself is the injured eyewitness of the evening incident of Water Tank.

(10) Case of Saberabanu Abdul Aziz Shaikh, female aged 24 years :

(a) Injury Certificate is at Exh.370, Exh.371 is compilation of the medical case papers. She had to be hospitalized from 28/02/2002 to 23/04/2002. She gave history of burns by kerosene and petrol at 6.00 p.m. at Naroda Patiya.

(b) PW-44 is the Doctor. 35% burns has been sustained over face, back, both upper limbs and posterior lower limb. She was hospitalised for about 64 days.

(c) PW 214 deposes in the tune of the injury certificate.

Finding of Victim Saberabanu Abdul Aziz Shaikh - Evening Occurrence:

She did sustain grievous injury in the riot on the date, time and place in the evening and PW herself is the injured eyewitness of the evening incident of Water Tank.

(11) Case of Usmanbhai Valibhai - Male aged 65 years :

(a) Injury Certificate is at Exh.372 and Exh.373 is the compilation. The patient had to be hospitalized from 01/03/2002 to 11/04/2002. PW-44 is the Doctor and PW-163 is the patient himself.

(b) History is of injury at 8.00 p.m. at Naroda Patiya. The patient had acid burns, CLW in Occipital region, burns of 10%.

PW 163 before the Court has testified the incident to be of Water Tank and time was about 06:00 p.m. in which he was burnt.

(c) It seems that suturing was done to this patient. He had sustained injury of Acid burns.

(d) The case papers shows the injuries to be not very serious and seems to be of 10% of burns. Moreover, he was admitted in the hospital after about 12 hours or so after the incident. Hence, considering the overall situation the injuries sustained by the patient can be held to be simple injury.

(e) The injured PW 163 supports the prosecution case of his injury who is also eyewitness of the *khancha* incident.

Finding of Victim Usmanbhai Valibhai - Evening Occurrence:

He sustained simple injury in the riot on the date, time and place in the evening and PW himself is the injured eyewitness of the evening incident of Water Tank.

(12) Case of Yasin Usmanbhai Mansuri, Male, Aged 16 years :

(a) Injury Certificate is at Exh.374 and Exh.375 is the compilation of case papers. PW-44 is the Doctor and PW-164 is the patient himself.

(b) The patient had to be hospitalized from 28/02/2002 to 12/04/2002. It has been opined by the Doctor that the patient had 25% of burns in right lower limb and left frontal portion. It is case of 25% thermal burns of second and third degree.

(c) The history is that of throwing of acid and kerosene at 3.00 p.m. Naroda Patiya.

(d) PW 164 has deposed before the Court that he was injured in the evening incident of Water Tank as was burnt by the mob by surrounding them. As far as the time of the incident is concerned, the time before the Court is to be believed.

(e) Considering the period of hospitalization of 42 days and the diagnosis of 25% burns, this is the case of grievous hurt.

Finding of Victim, Yasin Usmanbhai Mansuri - Evening Occurrence:

He sustained grievous injury in the riot on the date, time and place in the evening and PW himself is the injured eyewitness of the evening incident of Water Tank.

(13) Case of Shabana Abdul Rahim, Female aged 23 yrs.:

(a) Injury Certificate is at Exh.336 and the compilation of medical case papers is at Exh.337. PW-43 is Doctor.

(b) The history is that on 28/02/2002 at about 4.00 p.m. others were being burnt and she was also included.

(c) The patient had been hospitalized for 6 days, the injury seems to be over right hand and the injury of soft tissue.

(d) Considering the kind of the injury, it is to be treated as simple hurt.

Finding of victim, Shabana Abdul Rahim - Noon Occurrence :

Shabana has sustained simple injury in the noon incident at Patiya.

(14) Case of Shoheb Mohammad Aiyub Shaikh, Male - Infant, aged 20 days :

(a) Injury Certificate is at Exh.279 and Exh.280 is medical case papers compilation, PW-39 is Doctor and PW-151 is mother of the said infant.

(b) History given is burns by opposite party, house was burnt by opposite party, she got burnt to rescue her child.

(c) PW 151 has been examined who deposed that the occurrence took place near Water Tank when they were burnt there. She is eyewitness of death of mother-in-law and her son Firoz, two years old at that time. She and her infant son were also burnt there. She could managed to escape. The deposition on oath of the eyewitness should be believed in comparison with history of the hospital case papers.

(d) The Doctor has opined the burns to be 8% as superficial burns, which were noticed in right and left both upper limbs and 6% on lower limbs.

(e) Noting that the infant was only 20 days who had to be kept in the hospital for 12 days and further noting that 8% burns is too serious for any infant child, it is treated as grievous hurt.

Finding of Victim, Shoheb Mohammadayub Shaikh - Evening Occurrence:

He sustained grievous hurt in the riot on the date, time and place in the evening and PW himself is the injured eyewitness of the evening incident of Water Tank.

(15) <u>Case of Ahmed Badshah Mohammad Hussain Shaikh, Male 20 years</u> :

(a) Injury Certificate is at Exh.285 and Exh.286 is the medical case papers' compilation. Had to be kept in the hospital for six months. PW-39 is the doctor and PW-154 is the patient himself.

(b) The history is history of assault and caused burns during riots on 28/02/2002 at 5.00 p.m. by opposite party by throwing his body. Exh.285 is the injury certificate for burn injuries and for bullet injury.

(c) The patient was male of 20 years then. He has been diagnosed to have sustained burns of 35%, skin grafting on both upper and lower limb and on anterior chest was required and even burn injuries were also on the abdomen of the patient.

(d) The patient has sustained burn injuries as well as bullet injuries in left axilla. The certificate is on record. PW 154 deposed before this Court that he had sustained bullet injury in the firing incident in the morning and burns injuries in the evening incident at the Water Tank on the date, time and place of the riot.

(e) On perusal of the case papers, this seems to be the case of the patient who have sustained bullet injuries and burn injuries. He was transferred to plastic surgery for further management and that the plastic surgery was also done.

Moreover, the stay at the hospital of six months itself is self-speaking. Hence the hurt sustained by the patient is held to be grievous hurt.

Finding of Victim – Ahmed Badshah Mohammad Hussain Shaikh - Morning And Evening Occurrence :

PW 154 is the eyewitness as well as injured in the morning incident (bullet injury) as well as in the evening incident of Water Tank. This is no doubt, a case of grievous hurt.

(16) Case of Ahmed Mohammad Hussain Saiyad, Male aged 7 years :

(a) Injury Certificate is at Exh..277 and Exh.278 is the compilation of case papers, was indoor patient from 03/03/2002 to 05/04/2002, PW-39 is the Doctor, PW-76 is the father of the patient.

(b) History is of 'burns by opposite party on 28.02.2002 at 5.00 p.m. by throwing chemical on body and by lighting fire.'

(c) The patient has sustained 10% of superficial burns. As noted the patient was treated earlier at some private hospital. The case is of head injury, lower limb.

(d) The patient had to stay at the hospital for one month. He has sustained 10% burns on right and left lower limb. It seems that the patient was referred to Neuro Department for head injury but thereafter the opinion of Neuro Surgeon is not written in the injury certificate. But it can safely be held that

the patient had sustained head injury also.

(e) PW 76 is father of the patient. He testifies that son Ahmed was also burnt in the incident and was saved by the Sahenazbanu.

(f) Considering the fact of head injury and burns, the injury should be held to be grievous hurt.

Finding of the Victim-Ahmed Mohammad Hussain Saiyad - Noon Occurrence:

(1) Son of PW 76 was burnt in the noon occurrence at 5:00 p.m. This is grievous hurt.

(2) PW 76 is eyewitness of the Water Tank incident where he has seen his wife Noorjahan, mother-in-law Mehboobi, nephew Mohsin and niece Afrinbanu being cut and being burnt in the evening occurrence (eyewitness of many murders).

(17) Case of Mohammad Maru Raufalikhan Pathan, Male aged 39 years :

(a) Injury Certificate is at Exh.1965 and Exh.2023 is the medical case papers. Originally PW-43 has treated the patient but the documents are exhibited in the deposition of PW-285.

(b) The patient himself was examined as PW 191. PW 191 has testified about the Water Tank incident of about 06:30 p.m. in which he himself was burnt.

(c) The history is of burning them near Naroda at 06.00 p.m. by pouring kerosene, oil, petrol etc. The patient had to stay from 28/02/2002 to 22/04/2002.

(d) He has sustained 10% burns of second degree on upper back, chest and both shoulders. The burns have been shown to be of 10% whereas the patient had to stay in hospital for 42 days. These two in fact do not tally.

(e) However, perusing case paper Exh.2023 and noting the period for which the patient had to be indoor, it is clear that the patient was burnt by crowd after pouring kerosene on him at 06:00 p.m. on 28/02/2002 at Water Tank.

(f) The patient had been sent to surgical unit examining for CLW over forehead wherein the patient had refused for stitches, which shows that the injury was such wherein the patient was advised for stitches.

(g) These all if seen cumulatively, it is suggestive of patient to have sustained serious injuries, which were of burn injuries as well as CLW on forehead for which stitches were advised. The injury is therefore held to be grievous.

Finding of Victim – Mohammad Maru Raufalikhan Pathan - Evening Occurrence:

He sustained grievous hurt in the riot on the date, time and place in the evening and PW himself is the injured eyewitness of the evening incident of Water Tank.

(18) Case of Shahrukh Shabbir, Male Child :

(a) Injury Certificate is at Exh.1966. As per police yadi Shahrukh seems to be child of Shabbirali Adambhai Shaikh.

(b) The patient had to be hospitalized from 01/03/2002 to 26/04/2002. There are no case papers. PW-285 has proved, PW-43 had given treatment. She states that the case paper of Shahrukh Shabbir is not traceable in the hospital.

(c) The patient had to be hospitalized for 57 days, opined by the Doctor to have sustained 40% burns on the upper part of the body.

(d) The age of the child is not written but, that is not important looking to the fact that the burns are of 40% and the hospitalization is of 57 days. It is therefore graded as grievous injury.

(e) Many victims have referred the incident with Shahrukh on the date at the time and site of the offence. His injury is supported by many PWs. like PW-326.

Finding of Victim Shahrukh Shabbir :

Shahrukh Shabbir had sustained grievous hurt in the incident.

(19) Case of Kamarraza Mohammad Maru Pathan, Male, aged 5 years :

(a) Injury Certificate is at Exh.338 and case papers compilation is Exh.339, period of hospitalization is 28/02/2002

to 02/04/2002 - PW-43 is the Doctor, PW-191 is the father.

(b) History is of burnt by pouring kerosene, petrol, oil at Naroda at 6.00 p.m. of 28/02/2002.

(c) He sustained second to third degree burns on the back. It is opined that 15% burns but the patient had been kept for 32 days in the hospital. Considering the age of the patient and the period of his stay in the hospital even 15% burns is serious injury and the patient must have suffered some complications because of the burn injuries. Hence, the same is held to be grievous injury.

(d) PW 191, father has supported the fact of injury to his son, Kamarraza in the evening at the occurrence of Water Tank.

Finding of the victim Kamarraza Mohammad Maru Pathan - Evening Occurrence :

PW 191 and Kamarraza are injured eyewitness of the evening occurrence of water tank incident. Kamarraza has sustained grievous hurt.

(20) Case of Jetunbibi Aslammiya Shaikh, Female, aged 18 years:

(a) Injury Certificate is at Exh.364 and Case papers are at Exh.365. The patient had to be admitted from 28/02/2002 to 02/03/2002. PW-44 is the Doctor, PW-206 is the patient herself.

(b) History of beaten by stick at 6.00 p.m. at Patiya. The patient had a stay of only 2 days in the hospital and the injury

was on account of the stick blow. The same is held to be simple injury.

(c) PW 44 supports the version of the victim and the case papers.

(d) PW 206 testifies the incident to have taken place at 06:00 p.m. near Gangotri where she was beaten on her left back and beaten on head by iron pipe.

Finding of the Victim : Jetunbibi Aslammiya Shaikh - Evening Occurrence:

She sustained simple injury in the riot on the date, time and place in the evening and PW herself is the injured eyewitness of the evening incident of Water Tank.

(21) Case of Reshmabanu Aiyubkhan Pathan, Female, aged 10 years :

(a) Injury Certificate is at Exh.368 and Medical Case papers are at Exh.369, PW - Doctor - Exh.44, PW-106 is mother of the injured.

(b) History of beaten by stick at 06.00 p.m. at Naroda Patiya. The patient had to be hospitalized from 01/03/2002 to 27/03/2002. Upon perusal of the case papers, this seems to be the case of fracture in ulna, CLW and tissue injury.

(c) PW 106 has testifies that they were beaten and she was burnt near Gopinath-Gangotri which is Water Tank at about 06:00 p.m., younger daughter sustained fracture in this

incident, who is Reshma according to record. Thus, she supports.

(d) Since there is fracture to the patient this becomes a case of grievous injury.

Finding of the Victim, Reshmabanu Aiyubkhan Pathan - Evening Occurrence:

She sustained grievous hurt in the riot on the date, time and place in the evening and Reshmabanu and PW 106 are the injured eyewitness of the evening incident of Water Tank.

(22) Case of Kulsumbanu Ibrahimbhai, Female, aged 35 years :

(a) The injury certificate and case papers are collectively Exh.878. She was admitted in the hospital from 01/03/2002 to 06/03/2002. PW-134 is the Doctor, PW-153 is the patient herself.

(b) Given history of beaten by opposite party during riots assault by *lathi* in riot. Upon perusal of the injury certificate, this seems to be a case of fracture on left side rib of rib No.8, 9 & 10, fracture of left humerus, fracture of left thigh bone, fracture of right ulna.

(c) From the record, the case of four fractures suggests that it is impossible that there can be stay of only 6 days in the hospital as within 6 days the patient with these many fractures cannot even stand up also, then, what to talk of discharging the patient.

(d) In deposition of PW 153 injury tallies. She deposes about the incident of Water Tank where she sustained injury of fractures.

(e) PW 134 deposes that the Orthopaedic Unit has treated her. According to him, use of hard and blunt substance like *lathi* tallies with the injury.

(f) Looking to the injuries, the stay at the hospital does not found to be correct. Hence it appears that in writing the date of discharge the author of the certificate has committed some error as it is impossible to discharge such a patient. That being the situation, since there are four fractures, the case obviously can be held to be of grievous injury.

Finding of victim, Kulsumbanu Ibrahimbhai - Evening Occurrence:

She sustained grievous hurt in the riot on the date, time and place in the evening and she, herself is the injured eyewitness of the evening incident of Water Tank.

(23) Case of Zarinabanu Naeemuddin, Female, aged 25 years :

(a) Injury Certificate is at Exh.544, case papers are at Exh.546. Period of hospitalization is 01/03/2002 to 18/03/2002. PW-84 is the Doctor, PW-205 is the patient herself.

(b) The patient has fracture of left clavicle of left upper hand humerus, there is also deep injury in right muscle.

(c) History is given that beaten in communal riots.

Injury is over both shoulders and head. There is also injury of CLW.

(d) On account of the fact of fracture, her case becomes a case of grievous hurt.

(e) PW 205 states that she was subjected to gang rape and while trying to save herself from rape, she has sustained the injury at the site and occurrence of water tank.

(f) There is no reason to believe the testimony of PW-205 of gang rape on her. Even there are other eyewitnesses as well, of gang rape on her.

Finding for the Victim, Zarinabanu Naimuddin - Evening Occurrence:

She sustained grievous hurt in the riot on the date, time and place in the evening and she is the injured eyewitness of the evening incident of Water Tank and was gang raped as well.

(24) Case of Shaukatbhai Nabibhai Mansuri, Male :

(a) Injury Certificate is at Exh.327, Medical Case Papers are at Exh.326, PW-42 is the Doctor and PW-200 is the patient himself.

(b) The patient has given history of the mob of miscreants has beaten too much at Naroda Patiya on 28/02/2002 at 11.30

a.m. In the injury certificate there is no date of discharge.

(c) It is not clear whether the patient was indoor or outdoor but there is fracture in right ulna, abrasions on right leg and the patient must have remained in the hospital for reasonably good period.

(d) Even if he has been treated only as OPD patient, the fact remains that there is fracture in right ulna, hence the case needs to be treated as the case of grievous hurt.

(e) Note : PW-200 is the driver of TATA-407. According to defence, because of whom a serious accident had occurred and some Hindus were died in the said accident.

(f) PW 200 states that he was beaten up near I.T.I. area. This is not the area covered in the sites for this case. Moreover, this beating seems to be not of riot, but because of the driving of PW 200 as emerges on record from the depositions of another PW like 274 etc., it cannot be held that these accused were present at I.T.I. area hence, it is proper, just to hold that this incident is of charged offences. As far as his own injuries are concerned, none of the accused can be held responsible.

There is no finding with reference to charged offences.

(25) Case of Shahjahan Kabirahmed Shaikh, Female:

(a) Injury Certificate Exh.376, PW-44 is the Doctor, PW-161 is the patient himself.

(b) History is given of burns. 50% burns on chest, abdomen,

face and upper limb. Hospitalized from 28/02/2002 to 26/04/2002.

(c) The patient had 50% burns on upper part of body and had to stay in hospital for about 56 days. Considering the said fact and the area which was covered by burns, this seems to be the case of grievous hurt.

(d) PW 161 states that she was injured in the incident at the water tank in the evening.

Finding of Shahjahan Kabirahmed Shaikh - Evening Occurrence:

He sustained grievous hurt in the riot on the date, time and place in the evening and he is injured eyewitness of the evening incident of Water Tank.

(26) Case of Mohammad Khalid Saiyadali Saiyad, Male, aged 29 years :

(a) Injury Certificate and Case Papers are Exh.1979 (collectively), date of admission is 01/03/2002 stayed in the hospital upto 25/03/2002, PW-287 is the treating doctor, PW-255 is the patient himself. PW 255 states that he was hurt in firing.

(b) The history of bullet injury by opposite party. Liver tear because of the bullet injury. In the X-ray and C.T. Scan the bullet was found in the body.

(c) This is the injuries which is indeed fatal. The patient could

have died. It is by sheer luck that he could be survived. The result of liver tear is a serious effect of the bullet injury. The bullet removed from the body should have been recovered during the investigation and FSL report should have been obtained to confirm that the bullet injury was of private firing or police firing as there are also allegation of private firing. But, it has not been done.

(d) PW 255 testifies to have said before SIT that he was hurt in police firing (Para.36). No policeman is accused before the Court. No charge for police firing and resultant injury to PW 255 has been framed.

However, the injury to have been sustained by this PW 255 in the riot stands proved when PW 68 who is his wife also corroborate the version of PW 255 and the injury certificate on record.

(e) It is true that this PW is injured eyewitness of morning and evening occurrence but his injury is not subject matter of charged offence , no finding can be given for this injury.

Finding of Mohammad Khalid Saiyadali Saiyad - Morning And Evening Occurrence :

PW 255 is injured eyewitness of incidents of morning and even evening on the date, time and place of riot. History given of bullet injury by opposite party needs a note which should be of the morning occurrence. In the evening also, he has sustained injury.

(27) Case of Pir Mohammad Allabaksh - Male aged 35 years

(a) Injury certificate and case papers are collectively exhibited as Exh.1990, hospitalized from 01/03/2002 to 11/03/2002. PW-290 is the Doctor, PW-165 is the patient himself.

(b) The patient has sustained gun shot injury on his leg. The patient has sustained right tibia in leg and fibula fracture because of the gun shot he had to be in the hospital for 11 days.

(c) Considering the gun shot injury and the fracture, this is to be termed as grievous hurt.

(d) PW 165 is declared hostile by the prosecution, but as far as the bullet injury is concerned, he states that he did sustain it in the morning occurrence. He is not speaking as to how he was hurt in private firing or police firing ?

(e) He was not cross examined. The probability of his bullet injury in private firing cannot be ruled out as there is substantial and credible oral evidence on record revealing private firing in the morning incident at the place, date and time of the gun shot injury of the PW 165.

Finding of victim - Pir Mohammad Allabaksh - Morning Occurrence:

The PW 165 is injured eyewitness of morning incidents at Nurani and in that area. The probability of his gunshot injury to

have been caused in private firing exists and is believed by this Court.

(28) Case of Mohammad Hussain Shaikh, Male, aged 26 years :

(a) Injury Certificate and Case Papers are at Exh.1991 (collectively). Hospitalized from 01/03/2002 to 11/03/2002. PW-290 is the Doctor, PW-167 is himself.

(b) The patient has sustained fracture of left humerus on account of gunshot injury. There seems to be entry and exit wound of bullet. It seems that the bullet must have gone out of his body.

(c) The history is gun shot injury in riots. Considering the gun shot injury and the resultant fracture, this is a case of grievous hurt.

(d) PW 167 states that he was hurt in the firing on the road, police has started firing, para.51 clarifies that he never meant that he was hurt only in police firing. In his case also, gunshot injury in private firing is probable.

Finding of Mohammad Hussain Shaikh - Morning Occurrence:

PW 167 is eyewitness and injured in the morning incidents. His gunshot injury is held to be probable in private firing.

(29) Case of Mustaq Razzak Kaladia - Male aged 20

years:

(a) Exh.1976 as collective exhibit of Injury Certificate and Case papers. The patient was hospitalized from 01/03/2002 to 22/04/2002. PW-286 is Doctor.

(b) History is given of strangulation and bullet injury. Main artery of patient seems to have been damaged by strangulation and bullet injury.

(c) There is no mention as to whether bullet was removed or not. He seems to have undergone major surgery of carotid artery.

This seems to be a very serious case, which is obviously grievous hurt.

(d) Many PW have supported the injury in their version before the Court.

Finding of victim Mustaq Razzak Kaladia - Morning Occurrence:

Mustaq Razzak Kaladiya was grievously hurt in the occurrence in firing.

It is probable he to have been hurt in private firing.

(30) Case of Abdulmajid Saiyadali Saiyad - Male aged 23 years :

(a) Along with the case paper collective Exh.1987. The

patient was admitted on 01/03/2002.

(b) The date of discharge is not written, PW-289 is the treating Doctor, PW-255 has been examined to support the case. The patient had sustained CLW on the left turf muscle of 0.2 x 0.5'.

(c) In the opinion of this Court, it can hardly be titled as simple injury.

(d) PW 68 is his sister-in-law who is wife of PW 255. She has deposed that she and the injured went on the road to see PW 255 as they received the message of PW 255 to have been hurt in firing. At this time, this injured was also hurt in his leg. This tallies with the injury certificate and the injury of this injured seems to be genuine to have been sustained in the riot.

Finding of Victim - Abdulmajid Saiyadali Saiyad - Morning Occurrence :

Abdulmajid Saiyadali was injured by bullet in his left leg in the morning occurrence.

(31) Case of Raziyabanu Mohammad Aiyub - Female, 35 years :

(a) Injury Certificate is at Exh.283, Case papers are at Exh.284, PW-39 is the treating Doctor, PW-151 is the patient herself.

(b) Admitted in the hospital from 01.03.2002 to 24.05.2002. History is burnt by opposite side by pouring kerosene and then

lighting fire at 12.00 noon of 28.02.2002.

(c) The patient had burn injuries of 11% superficial to deep burns on abdomen, right and left lower limb and right upper limb.

(d) Considering the period of hospitalization and considering the facts and circumstances and further noting the fact that the patient also had head injury and sutured wound on left parietal region, this seems to be a case of grievous hurt.

(e) PW 39 is the doctor who has opined that the kind of the burns on the body of the deceased were possible if kerosene is thrown on one's body and then one is set ablaze.

Finding of Victim , Raziyabanu Mohammad Aiyub - Noon Occurrence:

The fact of long stay of about 84 days at the hospital by the victim, it seems that there is notable substance in the prosecution case to an extent that it proves that PW 151 is the injured eyewitness and had sustained grievous hurt in the incident at noon where the accused were lighting fire after pouring kerosene and that the victim injured has also sustained head injury.

(32) Case of Sufiyabanu Inayat Saiyad, Female, Aged 32 years :

(a) On account of the injury sustained by her in the riot, Sufiyabanu Inayat Saiyad was injured and was admitted in the Civil Hospital on 01/03/2002. Her Injury certificate is at

Exh.346 which has been proved by doctor PW 43. Her medical case papers are on record at Exh.347.

(b) She had to be admitted in the hospital from 01/03/2002 to 06/03/2002. The fact of her injury is supported and corroborated by the testimony of her husband who was PW 251. He deposed that since Sufiyabanu had sustained head injury and since her left hand had sustained burns injury, she admitted in the hospital.

(c) On perusal of the injury certificate, she had sustained abrasion and swelling, she had soft tissue injury. Looking to her period of hospitalisation and other contents in the injury certificate, she can be put into the category of simple hurt.

Finding of the victim Sufiyabanu Inayat Saiyad :

She had sustained simple injuries and on account of the injuries sustained by her in the communal riot, she was admitted in the hospital from 01/03/2002 to 06/03/2002.

(B) Injured who took treatment in Relief Camp (Case No. 33 to 96 and 97 to 125 from the Chapter of Occurrence Witness and others) :

(33) Case of Parveenbanu Salambhai, Female :

a) PW 152 is said Parveenbanu who states that she was badly hurt by burns injuries on her back, both hands and knee. She was treated at camp and then she was admitted at V.S. Hospital where she was treated for two and half months.

b) Unfortunately, no injury certificate was procured by the investigating agency, but there is no reason to disbelieve her.

c) Two and half months is too long a period of hospitalization. There is nothing on record but her deposition is sufficient to hold that she had also undergone grievous hurt.

Finding of victim, Parveenbanu Salambhai :

She was also PW who sustained grievous hurt in the riot.

(34) Case of Abdul Rashid Rahimbhai Shaikh :-

PW 218 – Abdul Rashid Rahimbhai Shaikh was also burnt at Water Tank as has been revealed in his testimony.

(35) Case of Mohammad Aiyub Shofilal Shaikh :-

PW 185 – Mohammad Aiyub Shofilal Shaikh was injured by rod at 4 to 5 pm on that day at the site of offence.

(36) Case of Sallaudin Abdul Karim Shaikh :-

PW 190 – Sallaudin Abdul Karim Shaikh was hurt at 12:00 noon by stone near S.T.Workshop.

(37) Case of Taufiqbhai Akbarmiya :-

PW 40 – Taufiqbhai Akbarmiya has sustained injury on his left hand at 12:00 noon, when mob entered Muslim chalis and burnt the houses there.

(38) Case of Kamrunnisha Muradali Shaikh

PW 56 – Karmunnisha Muradali Shaikh through her testimony proves the injury to herself and her daughter in the riot who have taken treatment at Camp.

All the the above referred witnesses were hurt on the date, place and time of the occurrence as narrated by them in their testimony. When they all are injured witnesses, normally they should be believed. Nothing is born out from their cross-examination to disbelieve their version on the injury sustained by them considering which this Court is of the opinion that all the said witnesses should be believed as they are natural and credible, hence the finding is as under :-

FINDING OF PW 218, 185, 190, 40 and 56 :

All the above are held to be injured eyewitness who were hurt on the date of the riot and place and time mentioned by them during their testimonies.

(39) COMMON FINDING FOR ALL :

Another important aspect during the cross of many doctors is that every inflammable substance would certainly leave smell or odour on the body. At para. 40, this suggestion has not been agreed by the doctor. It is also opined by the doctor that in flame burn, there may not be odour.

Another cross is and that is in many cases, is on the age of burns. L.A. poises question as to the age of the injury was not decided wherein many of the doctors have opined that on

account of the stage of rigour mortis, they can decide it and that the injury is not of 48 hours before. On the aspect of this cross, no substantial fruit have been born by the cross-examiner.

It is admitted by many doctors that the exact time and place of injury has not been written by the doctor, but on account of mass casualty even to think that such details would be written that too by the doctors at general hospital becomes a story of fairy-tale.

Another question is also for the injured eyewitnesses who have not involved any accused which was to the effect that they have not given name of any accused which the witnesses have fairly admitted. This question could have been relevant if the police has written names of the accused or police would have implicated the accused even though the injured is not telling the name, but then it is nobody's case that in this case it has so happened, this Court is of the opinion that certain part of the cross-examination is noticed to be effect-less as it was all irrelevant.

(40) Bibi Banu and Parvin Banu :

These injured persons took treatment at the camp. Moreover, all those who have been numbered from Sr.No.33 to 125 are the victims who themselves or whose relatives have taken treatment at the Relief Camp.

(41) <u>DETAILED STATEMENT OF INJURED PERSONS AND WHO WERE TREATED AT RELIEF CAMP</u> :

Sr. No	Name of injured person	Injury Certificate Exh.	Case Paper Exh.	Doctor who treated	Supporting PW/ Document
1	Shafibablu Mehboobbhai	507	509	PW 71	Document
2	Yasin Abdulmajid	504	506	PW 71	PW 156
3	Shehnazbanu Munawar (PW 155)	281	282	PW 39	PW 155 self
4	Bashir Ahmed Mohammad Hussain Shaikh (PW 207)	334	335	PW 43	PW 234
5	Aishabanu Mohammad Maru Pathan	340	341	PW 43	PW 191, 158
6	Afsanabanu Rehmanbhai Saiyad (PW 160)	342	343	PW 43	PW 160 self PW 114
7	Shabbirahmed Munirahmed Shaikh (PW 159)	344	345	PW 43	PW 159 self
8	Naeemuddin Ibrahim Shaikh (PW 158)	362	363	PW 44	PW 158 self
9	Farzanabanu Aiyubkhan Pathan (PW 106)	366	367	PW 44	PW 106 self 158
10	Saberabanu Abdulaziz Shaikh (PW 214)	370	371	PW 44	PW 214 self
11	Usmanbhai Valibhai (PW 163)	372	373	PW 44	PW 163 self
12	Yasin Usmanbhai Mansuri (PW 164)	374	375	PW 44	PW 164 self
13	Shabana Abdulrahim	336	337	PW 43	Document
14	Shoheb Mohammad Aiyub Shaikh	279	280	PW 39	PW 151
15	Ahmed Badshah Mohammad Hussain Shaikh (PW 154)	285	286	PW 39	PW 154 self
16	Ahmed Mohammad Hussain Saiyad	277	278	PW 39	PW 76
17	Mohammad Maru Raufalikhan Pathan (PW 191)	1965	2023	PW 285	PW 191 self PW 158
18	Shahrukh Shabbir	1966	--	PW 285	PW 181
19	Kamarraza Mohammad Maru Pathan	338	339	PW 43	PW 191, 158
20	Jetunbanu Aslammiya Shaikh (PW 206)	364	365	PW 44	PW 206 self
21	Reshmabanu Aiyubkhan Pathan	368	369	PW 44	PW 106, 158
22	Kulsumbanu Ibrahimbhai (PW 153)	878	-	PW 134	PW 153 self

Sr. No	Name of injured person	Injury Certificate Exh.	Case Paper Exh.	Doctor who treated	Supporting PW/ Document
23	Zarinabanu Naeemuddin (PW 205)	544	546	PW 84	PW 205 self PW 158, PW 247
24	Shaukatbhai Nabibhai Mansuri (PW 200)	327	326	PW 42	PW 200 self
25	Shahjahan Kabir Ahmed Shaikh (PW 161)	376	-	PW 44	PW 181
26	Mohammad Khalid Saiyadali Saiyad (PW 255)	1979 (colly) with case papers	-	PW 287	PW 255 self PW 68
27	Pirmohammad Allabaksh (PW 165)	1990 (colly) with case papers	-	PW 290	PW 165 self
28	Mohammad Hussain Shaikh (PW 167)	1991 (colly) with case papers	-	PW 290	PW 167 self
29	Mustaq Razzak Kaladia	1976 (colly) with case papers	-	PW 286	PW 105
30	Abdulmajid Saiyadali Saiyad	1987 (colly) with case papers	-	PW 289	PW 255, PW 68
31	Raziyabanu Mohammad Aiyub (PW 151)	283	284	PW 39	PW 151 self
32	Sufiyabanu Inayat Saiyad	346	347	PW 43	PW 251
33	Parveenbanu Salambhai Abdulla (PW 152)	Took treatment in Camp & for 2 ½ months at hospital.			PW 152 self
34	Abdul Rashid Rahimbhai Shaikh (PW 218)	Took treatment in Camp for burns injury at Water Tank			PW 218 self
35	Mohammad Aiyub Shofilal Shaikh (PW 185)	Took treatment in Camp as was injured by rod			PW 185 self
36	Salauddin Abdulkarim Shaikh (PW 190)	Took treatment in Camp as was hurt at 12:00 noon near S.T. Workshop			PW 190 self

Sr. No	Name of injured person	Injury Certificate Exh.	Case Paper Exh.	Doctor who treated	Supporting PW/ Document
37	Taufiqbhai Akbarmiya (PW 40)	Took treatment in the Camp for the injury on left hand.			PW 40 self
38	Karmunnisha Muradali Shaikh (PW 56)	Took treatment in Camp.			PW 56 self
39	Bibibanu (sister-in-law of PW 72)	Took treatment in Camp			PW 72, 158
40	Parveenbanu (niece of PW 72)	Took treatment in Camp			PW 72, 158
41	Basubhai Maiyuddin Saiyad (PW 73)	Took treatment in Camp			PW 73 self
42	Mother of PW 108	Took treatment in Camp			PW 108
43	Father of PW 108	Took treatment in Camp			PW 108
44	Fatimabibi Mohammed Yusuf Shaikh (PW 112)	Took treatment in Camp			PW 112 self
45	Husband of PW 112	Took treatment in Camp			PW 112
46	Zainul Abedin Mohammad Khwaja Shaikh (PW 113)	Took treatment in Camp			PW 113 self
47	Mohammadbhai Abdulhamid Shaikh (PW 138)	Took treatment in Camp			PW 138 self
48	Abbaskhan Pathan	Took treatment in Camp			PW 144 & 145
49	Jumman (brother of PW 162)	Took treatment in Camp			PW 162
50	Gulam Rasul (brother of PW 167)	Took treatment in Camp			PW 167
51	Mohammad Jallaludin Ibrahim (PW 170)	Took treatment in Camp			PW 170 self
52	Mohammad Nasim Shaikhbuddu Shekh (PW 173)	Took treatment in Camp			PW 173 self
53	Abdul Alim Abdul Majid Chaudhary (PW 174)	Took treatment in Camp			PW 174 self
54	Younger son Farid of PW 174	Took treatment in Camp			PW 174
55	Husband of Isratjahan Parves Hussian Saiyad (PW 177)	Took treatment in Camp			PW 177
56	Husband of PW 179	Took treatment in Camp			PW 179
57	Mohammad Aiyub Sofilal Shaikh (PW 185)	Took treatment in Camp			PW 185 self

Sr. No	Name of injured person	Injury Certificate Exh.	Case Paper Exh.	Doctor who treated	Supporting PW/ Document
58	Husband, Kabirali Shaikh of PW 181	Took treatment in Camp			PW 181
59	Son, Mohammadali of PW 181	Took treatment in Camp			PW 181
60	Salauddin Abdulkarim Shaikh (190)	Took treatment in Camp			PW 190 Self
61	Saiffudin (eldest son of PW 229)	Took treatment in Camp			PW 229
62	Harun (youngest son of PW 229)	Took treatment in Camp			PW 229
63	Javed Ismail Shaikh (PW 228)	Took treatment in Camp			PW 228 self
64	Mohammad Yunus Basir Ahmed Shaikh (Goggi)	Took treatment in Camp			PW 234 self
65	Basir Ahmed (father of PW 234)	Took treatment in Camp			PW 234
66	Mubarak Ahmed (brother of PW 234)	Took treatment in Camp			PW 234
67	Mohammadali (brother of PW 234)	Took treatment in Camp			PW 234
68	Samsadbanu (wife of PW 234)	Took treatment in Camp			PW 234
69	The mother-in-law of PW 231	Took treatment in Camp			PW 231
70	The brother-in-law of PW 231	Took treatment in Camp			PW 231
71	Mohammed Salim Ahmedbhai Shaikh	Took treatment in Camp			PW 242 self
72	Samirabanu (wife of PW 242)	Took treatment in Camp			PW 242
73	Maiyuddin Immamuddin Shaikh (PW 244)	Took treatment in Camp			PW 244 self
74	Nasiruddin Immamuddin Shaikh (son of PW 244)	Took treatment in Camp			PW 244
75	Navazunishah (daughter of PW 249)	Took treatment in Camp			PW 249
76	Rasulbi Azmuddin Shaikh (PW 260)	Took treatment in Camp			PW 260 self
77	Mehmooda (daughter of PW 260)	Took treatment in Camp			PW 260
78	Taufiq (son of Mehmooda, daughter of PW 260)	Took treatment in Camp			PW 260

Sr. No	Name of injured person	Injury Certificate Exh.	Case Paper Exh.	Doctor who treated	Supporting PW/ Document
79	Usmanbhai Dawoodbhai Shaikh (PW 60)	Took treatment in Camp			PW 60 self
80	Aiyub Usmanbhai Shaikh (son of PW 60)	Took treatment in Camp			PW 60
81	Mehboob Usmanbhai Shaikh (son of PW 60)	Took treatment in Camp			PW 60
82	Gulab Rasul Saeed Rasul Shaikh (PW 64)	Took treatment in Camp			PW 64 self
83	Son of PW 64	Took treatment in Camp			PW 64
84	Son of PW 66	Took treatment in Camp			PW 66
85	Son of PW 66	Took treatment in Camp			PW 66
86	Son of PW 66	Took treatment in Camp			PW 66
87	Son of PW 67	Took treatment in Camp			PW 67
88	Son of PW 67	Took treatment in Camp			PW 67
89	Badshah Abdul Kadar Qureshi (PW 69)	Took treatment in Camp			PW 69
90	Rashidkhan Ahmedkhan Pathan (PW 77)	Took treatment in Camp			PW 77
91	Mehboobbhai Umarbhai Shaikh (PW 80)	Took treatment in Camp			PW 80
92	Asma, daughter of PW 85	Took treatment in Camp			PW 85
93	Raziyabanu Yakubbhai Shaikh (PW 86)	Took treatment in Camp			PW 86
94	Mohammad Halim, son of PW 86	Took treatment in Camp			PW 86
95	Parvinbanu (daughter of PW 93)	Took treatment in Camp			PW 93
96	Mohammad Khurshid Mohammad Nasim Shaikh (PW 240	Took treatment in Camp			PW 240 self
97 to 125	Over and above the above referred 96 different PWs, even PW-2, 40, 59, 60, 62, 64, 66, 67, 68, 74, 77, 78, 80, 85, 86, 88, 152, 154, 155, 159, 160, 163, 164, 165, 205, 206, 207, 240 and 254 were also either injured themselves or their family members were injured or they themselves as well as their family members were also injured in the occurrence who all were required to take treatment at camp or otherwise. In nutshell, in all **125** prosecution witnesses were found injured or their close relatives were injured in the occorruce.				

(42) Over and above the above mentioned names, many other witnesses have also deposed to have sustained injury in the

occurrences on that day, but the above referred names from Sr. No.33 to 125 are of the victims or of their relatives who needed to take treatment in the Camp.

(43) CONCLUSION OF INJURY CERTIFICATE :

Upon perusal of the entire record, facts and circumstances of the case, this Court is of the firm opinion that the doctor witness, who are expert in their subject have given their credible and clinching evidence to properly and effectively provide corroboration to the oral evidence of the injured eyewitness and or of their relatives. The doctor witnesses have proved beyond all reasonable doubt that there is good amount of substance in the deposition of the injured eyewitness and their relatives who have stated before the Court as to at which point of time, at which site and how they were injured. The doctor witnesses have since provided corroboration, it has added strength to the prosecution case and it fully corroborates the oral evidence of injured eyewitness and their relatives which became extremely credible which otherwise also should be believed as they themselves are injured eyewitnesses.

The philosophy is that they being injured eyewitness of different occurrences of the date of the offence, they would not leave the real culprits and would not falsely implicate any of the accused. Their interest would always be to link the accused who has indeed committed the charged offences. The victims who needed to be treated at campb are also found natural and truthful. Why would they lie has not been proved. They are held to be giving probable account.

(44) FINAL CONCLUSION OF THIS PART :

From the testimonies of victims and injury certificates brought on record, about 125 victims or their relatives have sustained simple to grievous hurt. Moreover, certain victims and their relatives were injured on the date of the occurrence at the site of the occurrence, who all have, taken treatment at the camp. The interest of justice demands that the injured, in the facts and circumstances of the case, needs to be believed, considering which, it is held that in all about 125 persons were injured on the date of the occurrence and at the site of the occurrence. The list of the said 125 injured persons is on record in this part of the Judgment.

Through this part, it becomes clear that about 96 persons had died and atleast 125 persons have sustained injuries in the riot who all, are victims of offences against human body.

In light of what has been discussed in this part at A to E of the foregoing discussion, it is clear that the prosecution has put forward and proved beyond all reasonable doubt, the case of death of about 96 persons on the record as were occurred on the date, time and place of the occurrence and/or some of the deaths were caused on account of fatal injuries sustained by the deceased who died during their treatment. It is therefore, held that 96 persons of minority died in the communal riot at Naroda Patiya on 28/02/2002.

any of the injured were found on the verge of dying, their D.D. had to be taken, doctor PWs. testified their injuries were

on the vital parts of body and death could be natural course had the treatment been not received on time. No doubt about intention of the assaulter to kill. No doubt about the knowledge of probability of resultant death in the occurrence.

Putting all these together through this part, the reply to the Point of Determination for the offences u/s.323 to 326 and u/s.307 of the Indian Penal Code can be given and has been answered by this Court.

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~:: PART - 5 ::~

CHAPTER - I : APPRECIATION OF ORAL EVIDENCE OF DIFFERENT VICTIMS AND RELATIVES OR ACQUAINTANCES OF THE DECEASED

[I] Principles For Appreciation:

It is useful to quote relevant parts of certain celebrated Judgements which have been borne in the judicial mind while appreciating the oral testimony in this case.

(1) On the subject of delay in recording the Statement by I.O.:

Delay caused by the investigating agency or prosecuting agency in examining particular witness can never be held to be fatal and that no doubt stands created on the said aspect against the prosecution case.

(a) AIR 2002 SC 3164
[Bodh Raj alias Bodha and ors. V. State of J.K.]

Para 34.“------- It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination, is plausible and acceptable and the court accept the same as plausible,there is no reason to interfere with the conclusion.”

(b) AIR 2009 SC 2797
[Abuthagir & ors. V. State Rep. by Inspector of Police, Madurai]

Para 9. “---------- It is well settled that delay in examination of the prosecution witnesses by the police during the course of investigation ipso facto may not be a ground to create a doubt regarding the veracity of the prosecution's case.

So far as the delay in recording a statement of the witnesses is concerned no question was put to the Investigating Officer specifically as to why there was delay in recording the statement. Unless the Investigating Officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage there-from. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the

prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for delayed examination is plausible and possible and the Court accepts the same as plausible is no reason to interfere with the conclusion---------"

Para 11."--------- It requires a courage in case of atrocity for a simple man to come forward and proclaim the truth unmindful of the consequences to himself. A witness is normally considered to be an independent witness unless he springs from the sources which are likely to be tainted such as enmity.

Here again it would depend upon the facts of each case. In the instant case, as PWs 3 and 4 have no enmity with the accused, they are independent and natural witnesses. They are not under the control of the police and do not have in any sense any obligation to the police. Since they have revealed the truth after long time after seeing the photos of the accused persons, that cannot be a factor to discard their evidence---------"

Para 12. "PW-3 was a mason by profession and PW-4 was a petty seller of sarees. Their courage in coming forward to depose against the accused persons needs to be appreciated. Here are two persons from the lowest status of the society who had taken courage to stand up, picked and identified the accused persons. PW-2 and 3 have stated that they witnessed the incident from a place which is just near the Central Jail. In a bright day light the murder took place. Therefore, there is no infirmity in the identification."

(c) AIR 2007 SC 432
[B.K.Channappa V. State of Karnataka]

Para 18.“----------The occurrence took place on 05/07/1995 and the witnesses were examined in the Court after about a gap of almost five years. The evidence on record further shows that the injured witnesses had been subjected to searching lengthy cross-examination and in such type of cross-examination, some improvements, contradictions, and omissions are bound to occur in their evidence, which cannot be treated very serious, vital and significant so as to disbelieve and discard the substratum of the prosecution case.----------”

(2) Appreciation of evidence of horror struck PWs :

(a) AIR 1988 SC 696
[Appabhai and anr. V. State of Gujarat]

“Para-11. "--------- The Court, however, must bear in mind that witness to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witness at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.----------”

(3) Appreciation of the injured witness.

(a) 2007 (2) SCC (Cri.) 390
[State of M.P V. Mansingh and others]

“Para-9 The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Minor discrepancies

do not corrode the credibility of an otherwise acceptable evidence."

(Out of 173 victim PWs, about 120 PWs are injured PWs whose family members have also sustained injuries. The family members of many of the 120 PWs and of remaining PWs were done to death. They are needed to be believed since there is nothing to not believe them.)

(b) AIR 2008 SC 1198
[Vijay Shankar Shinde and ors. V. State of Maharashtra]

Para 9. "-------- As a matter of fact, the evidence of injured person who is examined as a witness lends more credence, because normally he would not falsely implicate a person thereby protecting the actual assailant."
(In this case, as many as about 125 injured PWs have been examined who needed to be believed since the principle is the, an injured normally would not falsely implicate anyone leaving aside real culprit.)

(c) 2007(3) GLR 2530
[Kailash Raghuvir V. State]

"Injured: Evidence of injured witness ought to be accepted unless, grave circumstances warrant that such evidence be discarded."

(4) Preference to ocular evidence in comparison with medical evidence :

(a) 2010 (2) SCC (Cri.) 236
[Mallapa Siddappa Alakanur and others V. State of

Karnataka]

"Para-21 In a conflict between the ocular evidence and the medical evidence, if the testimony is acceptable, trustworthy and reliable, the same should be preferred to the medical evidence."

(This is with reference to the self-styled guess work of PW 285 in this case, which has not been believed by the Court in comparison with ocular evidence of the eyewitnesses.)

(b) 2002 (1) GLR 176
[Vinugiri Motigiri V. State of Gujarat]

"Para-22.1 Importance and primacy is required to be given to the orality of the trial process and where the evidence of eye-witness is found credible and trustworthy, medical opinion pointing to alternative possibilities cannot be accepted as conclusive.

Para-22.2 Ordinarily the value of medical evidence is only corroborative and it proves that injuries could have been caused in the manner alleged and nothing more. Unless the medical evidence goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by the eye-witnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged in consistency between it and the medical evidence. The opinion of the doctor as to how an injury was caused cannot over rule unimpeachable testimony of eyewitnesses."

(c) AIR 2004 SC 77

[Ramakant Rai V. Madan Rai and ors.]

On Medical Evidence:

From Head note D."------ It is trite that where the eye witnesses account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eye witnesses account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the 'credit' of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

On Probability:

Para 25. "The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge.

Where the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.----------”

(d) AIR 2004 SC 2174
[State of Madhya Pradesh V. Sanjay Rai.]

Para 17. “----------Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case.----------"

"---------- Such opinions cannot be elevated to or placed on higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given.”

(This is with reference to some pages of a book of medical jurisprudence which has been tendered to the Court to falsify the oral evidence on record. As against that very experienced medical officer PW 127 has been examined who has also faced the cross-examination hence his version is always preferable than that of some pages from some book, may be on the subject. Suffice it to say that the book guides on general principle whereas the expert PW speaks on the contents of the document in question or with reference to the facts of the case.)

(e) AIR 2008 SC 1747
[Ram Swaroop V. State of Rajasthan]

Para 9. “Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice.”

(f) AIR 2009 SC 210
[Sunil Dattatraya Vaskar and anr. V. State of Maharashtra]

Para 25. “-------- Where the eye-witness account is found to be credible and trustworthy, the medical opinion suggesting an alternate possibility is not accepted to be conclusive.---------”

(g) 2004(2) GLR 1232 (SC)
[Chaudhary Ramjibhai Mansingbhai V. State]

“Medical Opinion: Where direct evidence establishes the attack

and injury, Prosecution need not necessarily have sought opinion of doctor whether injuries would have been caused by blunt side of the weapon."

(5) Immaterial contradiction, inconsistency, discrepancy, plea on exaggeration etc. in the evidence of PW.

(a) 2007(3) GLR 2530
[Kailash Raghuvir V. State]

"Contradictions: By human nature itself, there are bound to be some discrepancies in prosecution witnesses between narration of incident when they speak on details. If those discrepancies are not of material dimension, such discrepancies must be ignored and it would be doing injustice to truthful witness, to jettison their evidence on minor discrepancies, which they might commit on account of limitations of human nature. Parrot-like versions are disfavored by the Courts and therefore, small discrepancies not going to the core of the prosecution case, are natural and on the contrary lends credence to the individual witness. Mathematical niceties and account of each second in its sequence are never expected in criminal trial."

(b) 2010 (2) SCC (Cri.) 236
[Mallapa Siddappa Alakanur and others V. State of Kanataka]

"Para-15 The immaterial and unsubstantial contradictions, inconsistencies, exaggerations or embellishments, minor discrepancies or variance in the evidence do not make the prosecution case doubtful."

(c) 2007(1) GLR 39

[Mahendra @ Malio Bachubhai V. State]

“Exaggerations: In our country, witnesses suffer from an apprehension of being branded as false witnesses, and at times, in an attempt to avoid label being tagged to them, they add embroidery or a little frill of exaggeration in their deposition. The duty of the Court in such situation, is therefore, to separate the grain from the chaff, find out the truth and accept the same while discarding or neglecting such exaggeration or improvements.”

(d) AIR 2004 SC 313
[Chaudhari Ramjibhai Narasangbhai V. State of Gujarat and ors.]

On Contradictions:
"---------- Section-145 of the Indian Evidence Act, 1872 applies when same person makes two contradictory statements. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness vis-à-vis statement of other witnesses. It is not open to Court to completely demolish evidence of one witness by referring to the evidence of other witnesses. Witnesses can only be contradicted in terms of Section-145 of the Evidence Act by his own previous statement and not with the statement of any other witness.---------”

(This is with reference to the submission of comparative versions of different PWs to highlight contradiction among the two PWs which is not permissible u/s. 145 of the Indian Evidence Act.)

(e) AIR 2007 SC 1893
[Vikram and ors. V. State of Maharashtra]

Para 34. "---------- The purported omissions related only to the details of the occurrence, but the fact that P.Ws. 2, 3, 4 and 6 were eye witnesses to the occurrence does not stand thereby disproved in any manner whatsoever. The occurrence took place on 22/1/1997. They were examined in Court two and a half years later. If there occurred some contradictions or even assuming they had omitted to state the incident in great details, the same by itself would not lead to a conclusion that the appellants had been falsely implicated in the case."

(f) AIR 2008 SC 1860
[Shivappa and ors. V. State of Karnataka]

Para 19. "-------- Minor discrepancies or some improvements also, in our opinion, would not justify rejection of the testimonies of the eye-witnesses, if they are otherwise reliable. Some discrepancies are bound to occur because of the sociological background of the witnesses, as also the time gap between the date of occurrence and the date on which they give their depositions in Court."

(g) 2004(2) GLR 1232 (SC)
[Chaudhary Ramjibhai Mansingbhai V. State]

"Contradictions: Sec. 145 of the Evidence Act, applies when the same person makes two contradictory statements. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness vis-à-vis statement of other witnesses. It is not open to the Court to

completely demolish the evidence of one witness by referring to the evidence of other witnesses. Witness can only be contradicted in terms of Sec. 145 of Evidence Act, by his own previous statement and not with the statement of any other witness.

(6) Guiding force for appreciation of the oral evidence.

(a) 2007 (9) SCC 172
[Probodh Purkait V. State of W.B. and others]

“Para-32 We are unable to accept the reasoning of the Sessions Judge in disbelieving the evidence of PW-2. His evidence has been discarded on the ground that he had named as many as 157 persons to be part of the unlawful assembly which assembled in front of the house of PW-7.

According to the Sessions Judge it was impossible for him to have remembered the names of so many persons present. The Sessions Judge also doubted his testimony on the ground that the mob would not have allowed him to witness the incident and leave him untouched so that he could be an eye-witness against them.”

(The doubt raised with reference to the memory of PW 149 in the case gets reply from this.)

(b) AIR 1983 SC 680
[Rana Ptrap and others V. State of Haryana]

Para 6."--------- Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing.

Some start showing for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way.

There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

(c) 1993 SCC (Cri.) 1092
[Sardul Singh and others V. State of Punjab]

"Para-6 Presence of injured witness at the scene of incident, more particularly when medical evidence supports the version of witness, cannot the doubted. Where there are a number of injuries on the deceased and the witnesses have given some details about the manner in which they were inflicted, each witness cannot be expected to note the details in seriatim." (This is with reference to the inability of the PW at times to give details of the incident sought by the defence.)

(d) 2002 (5) SCC 234
[Devender Pal Singh V. State of NCT Delhi and anr.]

"Para-53 Exaggerated devotion to the rule of benefit of doubt must nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See Gurbachan Singh Vs. Satpal Singh 26.) Prosecution is not required to meet any and every

hypothesis put forward by the accused.

“Para-54 If a case is proved perfectly, it is argued that it is artificial, if a case has some flaws, inevitable because human being are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. Vague hunches cannot take the place of judicial evaluation.

" A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape …. Both are public duties."

[This is with reference to the claim of the defence for their entitlement of acquittal on any and every doubt.]

(e) 2000 Cr. L.J. 4047
[State of West Bengal V. Mir Mohammad Omar and others]

“Para-31 The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though is admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

Para-33 Presumption of fact is an inference as to the existence

of one fact from the existence some other facts, unless the truth of such inference is disproved. Presumption of fact as a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reach a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case."

(f) 2010 (4) SCC 469
[Dharamveer and others V. State of U.P.]

"Para-23 Why the appellants did not cause any injury to these witnesses cannot be explained by the prosecution. It will require entering into their mind. Human behaviour is sometimes strange. Merely the fact that these witnesses did not suffer any injury, will not make their evidence untrustworthy."

(This is with reference to the stock submission to doubt the version who by their sheer luck have remained unhurt in the occurrences. On the hypothesis that since they were not injured, they cannot be held to have remained present at the site.)

(g) 2006(3) GLR 2385
[Mohmmad Salim I. Qureshi V. State]

“Quantity: Law does not require any particular number of witnesses to prove a fact. Public prosecutor need not examine all witnesses cited by police in the Charge-Sheet.”
(This is with reference to the objections raised by the defence on the closure and explanation pursis filed by the prosecution declaring that certain prosecution witnesses have been dropped for the reasons mentioned therein.)

(h) 2004(2) GLR 1232 (SC)
[Chaudhary Ramjibhai Mansingbhai V. State]

Witnesses -Numbers: If a particular fact stands established by the evidence of trustworthy and reliable witnesses, the record is not to be burdened by examining other witnesses for proving the same fact as it would amount to multiplicity.

(i) AIR 2005 SC 44
[State of Madhya Pradesh V. Dharkole alias Govind Singh and ors.]

On Non-Examination:

Para 14. "It is not necessary for prosecution to examine somebody as a witness even though the witness was not likely to support the prosecution version. Non-examination of some persons per se does not corrode vitiality of prosecution version, particularly when the witnesses examined have withstood incisive cross-examination and pointed to the respondents as the perpetrators of the crime.”

(j) AIR 2004 SC 5050
[State of Uttar Pradesh V. Farid Khan and ors.]

Para 4. “------ Of course, the evidence of a witness, who has got a criminal background, is to be viewed with caution. But if such an evidence gets sufficient corroboration from the evidence of other witnesses, there is nothing wrong in accepting such evidence. Whether this witness was really an eye-witness or not is the crucial question. If his presence could not be doubted and if he deposed that he had seen the incident, the Court shall not feel shy of accepting his evidence.---------"

Para 5. "------ In order to earn their livelihood, people go to different places depending upon their choices and preferences. On the sole ground that the witness in question belonged to a different area and had no business to be near the place occurrence, his evidence should not have been disbelieved.”

(This is with reference to the testimonies of PW 200 and PW 213 who are victim of this case, but whose involvement has been attempted to be shown in other cases as accused.)

(k) AIR 2010 SC 1378
[Dharamveer and ors. V. State of U.P.]

Para 15. “---------- The evidence of an eye witness cannot be rejected only on the ground that enmity exists between the parties.----"

Para 18. "---------- Why the appellants did not cause any injury to these witnesses cannot be explained by the prosecution. It will require entering into their mind.
Human behaviour are sometimes strange. Merely the fact that these witnesses did not suffer any injury, will not make their

evidence untrustworthy.----------”

(l) AIR 2001 SC 1188
[Daya Singh V. State of Haryana]

Para 12. "--------- The purpose of T I parade is to have corroboration to the evidence of the eye-witnesses in the form of earlier, identification and that substantive evidence of a witness is the evidence in the Court. If that evidence is found to be reliable then absence of corroboration by T I parade would not be in any way material.------”
(Since the identification in the Court by the PW is the substantial evidence and as it is found reliable in the case on hand, there is no question to doubt the PW just because the investigating agency did not hold T.I.P.)

(m) AIR 2002 SC 3018
[Hardeep V. State of Haryana and anr.]

Para 12. “--------- In the criminal cases, the Court cannot proceed to consider the evidence of the prosecution witnesses in a mechanical way. The broad features of the prosecution case, the probabilities and normal course of human conduct of a prudent person are some of the factors which are always kept in mind while evaluating the merit of the case.------”

(n) AIR 2004 SC 3690
[State of Uttar Pradesh V. Devendra Singh]

Para 6. “-------- Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted.

Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counterattacking the assailants. Some may remain tightlipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

(o) 2004(1) GLR 592
[Koli Bhopa Premji V. State]

"The human mind is an imperfect instrument which in attempting to grasp facts, unconsciously twists and turns them often. A witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on a mental screen. It so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which to often has an element of surprise. The mental faculties therefore, cannot be expected to be attuned to absorb the details. Different witnesses react differently under different situations, whereas some become speachless, some start wailing , while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be

remedied. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern, is unproductive and a pedantic exercise."

(p) 2004(3) GLR 2588
[Ambalal Nandlal V. State]

"Eye Witness: When presence of any eye witness at the scene of offence is established, Court must accept the evidence unless it is found for sound reasons that evidence is tainted.

Contradiction: Sec. 162(2) of the Cr.P.C. makes it amply clear that the use of the police statement is limited for contradicting the witness as per Sec. 145 of the Evidence Act. If contradictions are proposed to be proved then attention of witness must be drawn to his previous statement/complaint."

(q) 2007(1) GLR 99
[Jayantilal Kuberdas Sharma V. State]

"The Court must bear in mind the set-up and the circumstances in which the crime is committed, the quality of evidence, nature and temperament of witnesses, the level of understanding and power of perception and examination of individual witness and probability in ordinary course of nature about the act complained of as might have been witnessed by the witnesses. The endeavour must be to find out the truth from the record. At the same time, it must not be forgotten that there cannot be a prosecution case with a cast-iron perfection in all respects and reason being that the perfection to that degree in ordinary course of human life is an utopian thought.

However, nevertheless, obligation lies upon the Courts to analyze, sift and assess the evidence on record, with reference to trustworthiness and truthfulness of the prosecution case, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the evidence without being obsessed by an air of total suspicion about the case of prosecution. What is to be insisted upon is simplicitor proof-emanating from the circumstances of the case and a ring of truth. The contradictions, infirmities it might have been point out in prosecution case must be assessed at the yardsticks of probabilities of the existence of a fact or not. Unless infirmities and contradictions are of such nature as to undermine the substratum of the evidence and found to be tainted to the core of prosecution case, over emphasis may not be applied to such contradictions and infirmities. Reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. The proof beyond reasonable doubt is mere guide-line and not fetish.

Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law.
A Judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that guilty man does not escape. Both are public duties.”

[II] **Common Facts :**

1. As is already deposed by numerous PWs and discussed in the chapter of Occurrence PW in this Part of this Judgement where most of the PWs have been observed to have

been saying the common fact and the same version that, on 28/02/2002 they saw assembly of persons in the form of unruly mob, all were Hindus, and that the disturbances in the area of Naroda Patiya began at about 9.30 a.m. onwards. There was assembly of violent mobs of Hindus, led by leaders of B.J.P., R.S.S., V.H.P., etc. who had deadly weapons in their hands who were doing slogan shouting like "Jay Shri Ram", "Cut Kill" "Kill the Miyas" "Don't leave any Bandiyas (slang word used for Muslims) alive", "We shall remove even the names of Miyas from this area" etc., most of the Muslims were residing in the Muslim chawls popularly known as "Hussain Ni Chawli" and "Jawan Nagar Ni Chawli", which is situated opposite Nurani Masjid, in front of the long and tall wall of S.T. Workshop.

2. There are series of Muslim chawls situated one after one, having haphazard construction mostly having small houses with the ground floor only, some of them were even residing in the rental houses and that they also used to do their businesses on less than small scale basis which was almost domestically run small enterprises. It is testified by almost every witness that on that day, the disturbances, cutting, killing, burning the Muslims by pouring kerosene and inflammable substances on them, ruining their properties were on-going. Deceased Muslim victims were burnt alive.

3. In the morning, the incident took place in the Muslim chawls as well as at Nurani Masjid situated across the road, which is religious place for Muslims wherein attempt of demolishing, destroying and damaging Nurani Masjid was done by the miscreants of the mob by dashing the kerosene tanker and by use of kerosene carts lying beside it.

4. In the morning, private firing was also done along with the police firing. In the morning and even in the noon, cutting, killing and burning of Muslims were on-going, the dwelling houses of the Muslim chawls were burnt, nothing remained from the entire household of the Muslims. Numerous were done to death in the morning and even in the noon as were murdered.

5. In the evening in between 06.00 to 06.30 p.m., the disturbances and the riotous activities went to its climax where certain Muslims were cordoned and were burnt alive near the water tank situated between Gopinath and Gangotri, which place is also known as *khancha* by the Muslims (the word *khancha* means a kind of curve like corner) where according to witnesses, three sides were covered up and there was only escape on one side which was open, which too was covered by the mobs and that at this place, several Muslims were burnt together and the serious massacre took place at this place. In the evening, in different parts of Muslim chawls cutting, killing and burning Muslims were on-going, looting of their property has also been done, on that day it was a call for Gujarat "Bandh" (voluntary curfew) by Vishwa Hindu Parishad and other such organizations like R.S.S., Bajrang Dal, etc. have joined it and that on the road which is National Highway Road as well as in the internal parts of Muslim chawls, killing of Muslims was continuing. That being the situation, the Muslims were frightened and attempted to run away, some of them could successfully do it whereas, as the misfortune would have been, some of them could not manage their escape and that they were killed on that day at different parts of the Muslim

chawls and about 58 Muslims were killed at the water tank area and numerous were injured there.

6. Some of the Muslims could be saved as police went at the *khancha* after the occurrence was over. The burnt Muslims were taken to the Civil Hospital and those who were victims of bullet injuries were taken to V.S. Hospital as well. But in nutshell, those who were saved, were treated at different hospitals or at the relief camps itself. Some of them, then survived.

7. These are some glimpses of the common and general versions stated by all the different prosecution witnesses who are victims or relatives of the deceased victims. The common fact in depth shall be discussed in the Chapter - I of this part.

This part is allotted to this class of witnesses and the appreciation of their oral evidence has been done in this part of the judgment.

8. These all facts were commonly voiced by almost all witnesses whether they involved any accused or not. In all, the occurrences took place in the morning, noon and even in the evening at the Naroda Patia area.

9. Though the common facts were challenged by the defence, questioning veracity of the witnesses, credibility of the witnesses and questioning the probability of the occurrence they were deposing, this Court does not find the challenge to be substantial and effective challenge as no material is on record to disbelieve the PWs on these common facts.

10. The common facts discussed herein above, were also testified by the occurrence witnesses (Chapter-1 of this Part) who do not involve any of the accused and it is also testified by the witnesses who involved only dead accused (Part-6).

11. The occurrence witnesses and even other victim or relative of deceased victim PW have deposed on the damages sustained by them. The panchnamas for the damages caused to their houses have also been drawn, all of which have come up on record. The complainants - witnesses through their complaints, which are on record, prove the prosecution case and that their overall version, is found to have been proving their complaints. All these complaints have been merged into I-C.R.No. 100/02.

While appreciating the totality of facts, circumstances, the versions of the witnesses, their demeanour and their overall version during their testimonies, this Court is of the opinion that all the prosecution witnesses were eye-witnesses of the occurrences narrated by them, they were quite natural, credible and were putting up the evidence which can safely be believed and depended by the Court as far as these common facts are concerned.

[III] Other Than Common Facts :

1. The specific facts or facts other than these common facts stated in their version, have been appreciated while doing individual appreciation of the oral evidence of the witnesses.

2. In all about 173 prosecution witnesses have been examined to prove the occurrences, deaths, damages, injuries etc. happened throughout the day.

[A] <u>Occurrence PWs</u> :

1. Out of those **173** witnesses, about **57** witnesses viz., PW No. 1, 2, 38, 40, 41, 45, 53, 55, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 74, 77, 78, 80, 85, 86, 87, 88, 89, 91, 92, 93, 111, 151, 152, 153, 154, 155, 159, 160, 161, 163, 164, 165, 205, 206, 207, 214, 225, 240, 246, 251, 254, 255, 259, 324 and 325 have been appreciated, discussed and worth of those witnesses has been decided in the Chapter-1 of Occurrence Witnesses in this Part of the Judgement, as those PW are not involving any accused but, they prove the occurrences of the day.

2. This Court has also appreciated **14** PW viz. PW 54, 70, 75, 76, 79, 81, 82, 90, 140, 148, 166, 191, 248 and 326 in the chapters where the evidence of the PW who only involved dead accused at Part-6 of the judgment has been discussed.

3. In the same way, about 13 witnesses have been discussed, appreciated and their worth has been decided under the Chapter of Conspiracy at Part-3 of the judgment who are all victims of the crime.

4. Hence in all, this Court now shall appreciate and shall decide the worth of, credibility of and relevancy of the versions given before the Court by remaining about 91 different PW witnesses, who in fact, involve one or another

accused mainly, for allegation of causing serious injuries to the victims and or for committing homicidal deaths of different deceased, relatives, acquaintance or neighbours of the deceased witnesses and or committing offences against property, relating to religion, etc. Most of them are eyewitnesses of different murders, injuries, attempt to murder, looting and different occurrences throughout the day etc. We shall examine each of the witness one by one at Chapter 1 and 2 hereinafter.

[B] Occurrence Prosecution Witnesses, who do not involve any accused by name :

1. Following occurrence, prosecution witnesses are such who have not named any of the accused during their testimony, in their complaints or in their statements. They have only stated about occurrences of the day and damages caused to their properties, dwelling houses, their shops, wooden cabins, carts, vehicles, about injuries caused to themselves, their family members and their relatives or acquaintances in the riot at Naroda Patiya on the date of the occurrence at different sites. It is clarified that as a matter of fact, at the end of the trial it becomes crystal clear that the site of the offence of the morning occurrence was inside and outside Nurani masjid, outside the gate of S.T. Workshop, different Muslim chawls situated opposite Nurani masjid facing the S.T. Workshop Wall, the Muslim chawls behind Nurani masjid, water tank area, between Gopinath society and Gangotri society also known as 'U' Shaped place or Khancha and the ground as the pitfall of Jawan Nagar.

2. PW No.1, 2, 38, 40, 41, 45, 53, 55, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 74, 77, 78, 80, 85, 86, 87, 88, 89, 91, 92, 93, 111, 151, 152, 153, 154, 155, 159, 160, 161, 163, 164, 165, 205, 206, 207, 214, 225, 240, 246, 251, 254, 255, 259, 324, 325 are all occurrence PW through whose testimonies, occurrences of the day have been established on record of the case.

3. If the depositions of all the 173 victim witnesses are summarized, and if common points in all the testimonies are seen, then, the following common points emerged very clearly on record. Even the 57 occurrence witnesses and the 14 witnesses who involved only dead accused have also testified on this aspects. In fact, this aspect seems to be almost unchallenged aspect as no substantial challenge has been offered by the defence at any stage of the case qua the following common facts.

(a) The date of the occurrence is 28/02/2002, on that day, unruly, violent mob, who all possessed deadly weapons and who all were giving different slogans against Muslims, the mobs came from all around, targeting Muslim chawls and Nurani masjid.

(b) All the inhabitants of the Muslim chawls have sustained tremendous loss to their properties. Their versions are also about death of their family members, injury to themselves, to their children, near relatives etc., as was occurred during the riot of that day by the violent riotous mobs.

(c) That the occurrence took place near Nurani Masjid and at the Muslim chawls opposite Nurani Masjid, the entry of which, is facing long S.T. Workshop wall, that the call for the Bandh (voluntary curfew) was given by Vishwa Hindu Parishad and the riotous mobs were of the volunteers of Vishwa Hindu Parishad, R.S.S., Bajrang Dal and leaders of B.J.P. etc.

(d) That somewhere from about 9.30 a.m. and thereafter, the riotous mob with deadly weapons, of thousand of Hindus came from all different sides who were making uproar, clamour was all around, the disturbances started severely after 11.00 a.m. when the Hindu mobs unduly entered in Muslim chawls and thrust into the Muslim houses, the infuriated mobs started doing massive onslaught and created violent disorder all around. The entire day was the day of horrendous carnage, stone-pelting on Muslims was common, stone-pelting on Nurani Masjid was done, there was gas cylinder blast at the Masjid, everyone in the mob was with some or other deadly weapon, including gupti, trident, scythe, spear, sword etc., Kerosene, petrol and even burning rags were also thrown, they set on fire Muslim houses in the Muslim Chawls, killed and burnt Muslims, slogan shouting was also all around wherein they were mainly shouting "slaughter, Cut, not a single Miya should be able to survive, Jay Shri Ram" etc.

(e) They were shattering the property of Muslims into pieces; they were ransacking the property of Muslims by unduly getting into the dwelling houses of Muslims; they were outraging the modesty of Muslim women; they were torching even women, children, crippled by burning them alive. The men of the mob wore Khaki half and saffron headband.

(f) On the suggestion during the cross-examination that Muslims were doing cross stone pelting or it was initiated by Muslims, it was replied by the PW that the Muslims did it in defence. This seems to be genuine upon noting the fact that even from the figure of 4 and odd percentage of Muslim population in the area and further noting that only after some time Muslims ran away or were broke down and it is Muslims who had to be away from their roots for months together and had to be at Relief Camps in totally helpless position and some of them were so frightened that they left Naroda Patia area altogether.

(g) What has been unfolded is, the police was not active in protecting the Muslims. Different chawls in the area are mainly known as Hussain Nagar or Hussainagar-Ni-Chawl. All Chawls, situated in the beginning of the road opposite Nurani Masjid and thereafter, are popularly known as Jawan Nagar or Hussain Nagar. Adjoining Jawan Nagar there is Gangotri Society besides which there is Gopinath Park. The Gokul Society was then under construction, the khaada (pitfall) of Jawan Nagar was near Jawan Nagar, Jawan Nagar did not have any direct access from the Highway because of a wall partitioning Jawan Nagar Khaada and Jawan Nagar.

(h) The wall of Jawan Nagar was demolished by the Hindu mobs around 04:00 p.m. The disturbances started right from about 9:30 a.m onwards. Many of the residents in the Muslim locality were staying on rental basis who had to change their houses often, but, most of them were residing in the area since about 2 to 4 decades or even more. There were attacks

on Muslim dwelling houses, Muslim shops, wooden cabins, carts etc. by burning and destroying them. The goods in the shops were ransacked, all the household and material in the shops were looted by men of Hindu mobs; Even the pet goats were looted, all the household articles were shattered into pieces and lot of robing was done by the Hindus of the mob.

The damaging and destroying was also done in the houses of Muslims and in Nurani by bursting gas cylinder and by throwing inflammable substances. Police did laathi-charge and firing wherein many Muslims were killed. The S.R.P. Quarters was adjoining to Jawan Nagar, but in the S.R.P. Quarters, they were not allowing the people to get inside. Hence, many were beaten while attempting to enter the S.R.P. Quarters. However, some of the Muslims could secure their shelter at S.R.P. which might be in the morning itself and thereafter it was prohibited.

(i) The violent mobs were marching inside the Muslim chawls. They were burning Muslims alive and torching the Muslim dwelling houses, unforgettable damage was caused to the Muslims, the atmosphere was surchilled with fear, anxiety and tension and understanding the tribulation on the frontal side the Muslims could not go towards Nurani Masjid since police was firing and bursting tear gas shells from that side was going on. Even violent mobs with deadly weapons in the hands of each of the members, were there. Police was doing laathi charge and asking Muslims to go inside the house, which houses became very insecure, unsafe and sure to die site, hence the Muslims were not inclined to go inside.

(j) Having no option the Muslims then went on the backside of the Muslim Chawls which was towards Hindu societies. Some of them went to Jawan Nagar Pit fall, some of them went firstly to Hussain Nagar and then to Jawan Nagar. Then, upon increase of tension and further marching and attacking of the mobs, they continued stepping back and back and some took refuge at the terraces of closed bungalows in Hindu society i.e. Gangotri Society.

(k) Ultimately, as discussed, some of them took shelter at the terrace of Gangotri, some went to the house of Pinjara Ghadiyali, Bakeriwala at Hussain Nagar, some of them went to the houses of relatives in search of safety, some were successful in entering adjoining SRP Quarters, some of them went to vacant houses or the locked houses of Gangotri and some went to a place like shop or like a big hall with shutter.

In nutshell, every Muslim was running here and there in search of a shelter. In this process, most of the occurrence witnesses were injured, their children were also hurt by stone, some had sustained burn injuries, some had sustained injury by the weapons which were used by Hindus, some of the persons were slaughtered and killed on the road itself.

(l) The PWs have revealed that, after 04:00 p.m., all of them were running here and there, they were between devil and deep sea as they were sandwiched between the two violent Hindu mobs, they were victims of bestial violence on the day by Hindus. Every witness talked about the scenes of massacre they have seen, about the fact that indiscriminate killing of

Muslims was continued. Nothing but constant fear was in Muslim psyche. Hindus had cordoned helpless Muslims, including women, crippled children, even infants and old people were not left alive, mass extermination had taken place near Gangotri in the evening. (This has been referred to as water tank, evening or *khancha* occurrence). The Hindu mob at Nurani has attacked on Nurani, did throw stones on Nurani, tried to burn the Mosque by pushing inside burning vehicle by dashing the vehicle. The charged mobs sabotaged Nurani.

(m) After some days, the panchnama for the damages of dwelling houses of shops etc. were also drawn and statements of some of the victims were also recorded wherein something was written as stated by the witness and where bigwigs were involved, the same was skipped, as emerged from the testimony of different witnesses. Meaning thereby everything that was spoken by the PW was not taken down by the police during the previous investigation.

(n) The PW have also disclosed horrifying sordid tales of gang rapes on Muslim women, some of whom were guests. The husband like PW 74 had witnessed murder of his handicapped wife by the mobs in the noon occurrence by burning her alive pouring petrol or kerosene on her after giving her sword blow and pipe blow, disturbances throughout the day, sabotaging the whole day. The helpless wives and mothers had to witness murders of their family members. What can be more painful for the wife than seeing the death of her husband and three children. In the occurrence near water tank many accused have poured acid, kerosene from the terrace around the *Khancha* and by sword blow killing the family

members and thereafter burning them was repeated by many PWs witnessing the death of mother, sister-in-law (*bhabhi*), nephew, niece at the *khancha* (case of PW 85), PW 65 had to see burning parents near Hussain Nagar, a woman carrying injured husband and brother-in-law who were victims of firing for that whole day, are all the tales, which are full of grief, helplessness and agonies. PW 41 stated about threat to him by the P.S.I. that '*if he would speak anything other than damages his complaint would not be recorded*' and this shows how helpless Muslims were. Almost all PWs have stated that the police was not writing as was spoken by them. In view of the facts of this case, this Court is inclined to believe the same.

4. Almost all the PWs have stated more or less the same fact on oath before the Court as far as the occurrences of the riots are concerned.

PW 160, 163, 164, 214 and 251 were also examined to prove in specific the incident which took place near the Water Tank between Gangotri Society and Gopinath Society where the witnesses were cordoned off near the Water Tank. Thereafter inflammable substance was thrown, and they were burnt alive. Most of the PWs are injured eyewitnesses. The depositions of these witnesses tally with their injury certificates and even their statements before Executive Magistrate recorded as Dying Declarations respectively vide Exh.847, 844, 845, 843 and 846.

5. During deposition, the witnesses who have lost their near and dear family members, were in tears and were in emotional set back. Almost all of them were injured eye-

witnesses of the occurrences. Barring hardly two or three PWs, all others were stating from their personal knowledge. Some of them were also complainants of the complaints which were merged into main complaint of I.C.R.No.100/02, Naroda Police Station by the order of the then Police Commissioner.

(5-a) There occurred many occurrences throughout the day. The occurrence of morning was mainly at Nurani, Muslim chawls, near S.T. Workshop, mobs approaching Patia on the Highway, near Hall, from about 9:30 a.m. to about 12:00 noon are referred as '*morning occurrences*'.

(5-b) The incidents, mainly at Muslim chawls, opposite Nurani, at Jawan Nagar Pitfall, the breaking of the wall of Jawan Nagar etc., from about 12:00 noon upto about 5:00 p.m. are referred to as '*noon occurrences*'.

(5-c) The occurrence at *khancha*, water tank, near Gangotri, near Gopinath, in the way between S.T. Wall and Muslim chawls, are all referred to as '*evening/khancha/water tank occurrences*' which were from about 5:00 p.m. onwards.

(5-d) Whether morning, noon or evening, in all the occurrences the offences against properties, human body, of mischief, relating to religion, etc. did take place. In all the three occurrences the situation, as narrated herein above, at paragraph 3(a) to 3(n) was common. In addition to that, the offences mentioned below were also committed in different occurrences.

It is clarified hereby that in the entire judgment use

of the word morning occurrence/s, noon occurrence/s, evening occurrence/s are to be understood and appreciated keeping in mind the description given herein below for each of the occurrence separately. In other words, as is derived from the testimonies of different PWs including occurrence PW and PWs who involved only deceased accused, it becomes clear that as a matter of fact, the occurrences continued right from 9:30 a.m. to about 7:00 to 8:00 p.m. and that the occurrences took place in the morning, evening and even in the noon. The witnesses do not have perfect time sense and when the unlawful assembly was the same, only some of the members discontinued at some point of time and some of the members joined at some point of time, the occurrences had to be classified so as to fasten the criminal liability of particular accused basing upon their presence in a particular occurrence. The unlawful assembly has done everything throughout the day in the same transaction and for the common objects which were shared by all those accused who became members of the unlawful assembly at any point of time in the entire day. Some of the members of the unlawful assembly were also conspirators but, they also shared the common objects hence, they did participate in the conspiracy as well as in the unlawful assembly as its members. In nutshell, the classification of the occurrences is based on the oral evidence adduced on the record.

6A. MORNING OCCURRENCES:

From 9:30 a.m. to about 12:00 noon.

Main Sites of the offences : Nurani Masjid, Muslim

chawls behind the Nurani Masjid, outside the gate of S.T. Workshop and all Muslim chawls opposite Nurani Masjid.

The occurrences of the morning related to offences affecting the human body including murders, attempt to murder, damages, offences relating to religion, offences relating to public tranquility, conspiracy, offences against property, of mischief, etc. can be put in capsule form as under.

(1) Murders (Sec.302 of I.P.C.):

Hassan Ali Mohabeali Mirza, brother of PW-135, husband of PW-166 Mohammad Hassan Qureshi were burnt alive, murders of Bhatti Razzak and Shakinabanu Bhatti by torching while they were in their dwelling house, Mohammad Shafiq Adam Shaikh was murdered in the morning as is clear from EXH.2021, EXH.2075 suggest murder of Shakina Mebhoobbhai while she was in her house, who succumbed to the fatal injuries, PW-104 and other PWs have testified, as discussed at Part-7 under the heading of private firing, that Muslims like Hassan, Aabid, etc. died on account of private firing in the morning done by the accused. These are among the murders committed in the morning.

(2) Injuries (Sec.307, 323 to 326 of I.P.C.):

PW-116 proves that at about 11:30 a.m. there was attack in the Muslim chawls by the violent mobs with deadly weapons who were cutting, killing and burning Muslim inhabitants. PW-165 and PW-167 were injured in the private firing. Razzak Babu Bhatti, Shakina Babu Bhatti and Shakina Mehboobbhai

had sustained serious burns injuries who had to be admitted in the hospital and who all succumbed to the injuries. This clearly proves attempt to commit their murder by torching the entire house while they were inside their houses (EXH.232, EXH.210 and EXH.2075 are the concerned inquest panchnamas). PW-70 testifies that Peeru, Khalid and Mohammad had sustained injuries in the firing, PW-191 testifies Peeru and even son of Hamidali of having sustained injuries in firing, PW-76 was injured in firing, 2 children of PW-229 had sustained injuries, PW-227 testifies that he himself sustained injury. Moreover, for among those who had to be admitted in the hospital for their treatment, are the victims of the crime who have sustained injuries while an attempt to murder them was committed and that some of them have sustained grievous to simple injuries. About, 7 victims have sustained grievous hurt in the morning while attempt to commit their murder was committed and one victim has sustained simple injury in the morning occurrence. The details of which has been discussed at Part-4 of the judgment where injury has been discussed at length.

(2-A)Offences At Nurani Masjid :

The attack and assault on the religious place of Muslims viz. Nurani took place in the morning while the unruly violent mob of Hindus, who were possessing deadly weapons and who were giving very exciting and provoking slogans against Muslims. Minerates of masjid were broken, attempt to demolish the masjid was made, gas cylinders were burst inside the Nurani, it was torched after throwing inflammable substance on the masjid as stands proved on the record. A-21 and A-22 have confessed in their extrajudicial confession which

is found to be most believable one, that attempt to demolish the masjid was made but, the masjid did not shake, pig was killed and tied on the masjid, saffron flag was unfurled, tanker filled with diesel was dashed into the masjid, the compound walls were pushed by the vehicle, stone pelting was continuously done including stone pelting on masjid, burning rags were thrown, which all are the glimpses of the account on the offences committed in the morning relating to religion.

(2-B) Unlawful Assembly, Conspiracy :

Another important event was that, the men of the Hindu mobs came from all the sides who were possessing lethal and deadly weapons like swords, scythes, kerosene tins, firearms, hockey, baton, etc. exciting and provoking slogan shouting was ongoing, the slogans like 'Jai Shree Ram, cut, kill, go to Pakistan, take the revenge of Godhra carnage, don't leave the bandias, rob the miyas, burn the miyas, not a single miya should be left alive, etc.'

A-37, being the kingpin of the entire conspiracy and also being a leader gave a lecture where the other 26 conspirators alongwith unknown persons and deceased accused were present who all have assembled at a fixed site, at a fixed time, on the fixed date, which is obviously, according to the design, agreement, preconsort and premeditation were on account of the understanding arrived among all the accused on account of the conspiracy hatched, all the 26 conspirators and others were in readiness to carry out the illegal acts with a motive to take revenge of the Godhra massacre as, many Hindu Karsevaks were done to death on the previous day where, the

leaders have visited and seen their corpses.

Out of the 27 conspirators, 26 conspirators alongwith deceased conspirators have formed unlawful assembly while sharing the common objects as have been discussed at an appropriate part of the judgment but, the main among them is commit mischief and other offences relating to religion, against human body, against property, etc. This unlawful assembly started committing the offences with utmost preparation including carrying with them burning rags, inflammable materials and using the material available at different places.

It needs a note that in the morning two carts of kerosene were parked outside the Nurani of two different PWs which were used in torching Nurani. In the same way, the gas cylinders lying in the dwelling houses of the Muslims were also used to blast the Muslim dwelling houses and chawls. Even the kerosene stock lying at the rationing shops run by the Muslim PWs was also utilized in torching the Muslim chawls. This commission of the offences and forming of unlawful assembly was done under instigation and abetment of many of the conspirators but, mainly by leader A-37 who all acted in pursuance of the conspiracy hatched among them. **(THE MODUS OPERANDI DESCRIBED HERE IS COMMON FOR NOON OCCURRENCE ALSO RATHER IN NOON OCCURRENCE IT WAS ON ITS PEAK.)**

(3) Damages (Sec.427, 435, 436, 440 of I.P.C.):

Numerous shops, dwelling houses, cabins and carts of the Muslims were burnt in the morning. The facts and figures are

reflected in the map EXH.474 Part 1 to 4. PW-144 testifies that the mob viz. the unlawful assembly unduly entered in the Muslim chawls and has damaged, destroyed and ransacked properties of the Muslims. The dwelling houses were burnt though, alive Muslims were inside. When the accused were doing it right from 10:00 a.m. their knowledge about the inmates being inside the house cannot be doubted. This would clearly connect them with the intention to kill therefore, the accused can safely be held to have committed murders.

As has emerged from oral evidences of different PWs, printed complaints, other complaints, applications, panchnamas of site of the offence, etc. it is proved beyond doubt that the accused have unduly entered in the Muslim chawls which was being used as dwelling houses by the Muslims and that the intention as can be gathered from the conduct of the accused was to destroy and demolish all the Muslim chawls with all the dwelling houses, shops, carts, cabins of the Muslims. The accused have entered unauthorizedly and illegally in the Muslim chawls and by using criminal force, they have destroyed, damaged, ransacked and scattered the household articles, saleable article and all that which was lying in the houses, shops, etc. like iron cupboards, T.V., embroidery machines, sewing machines, vehicles, households, furniture, freeze, tap recorders, washing machines, vessels, cots, gas cylinders, gas stoves, mixtures, fans, bedrolls, mattresses, grocery, ornaments, cash, pet animals like goats, etc.

PW-223 and EXH.2391, the letter of I.O.C. prove about 25 gas cylinders were found short at the Uday Gas Agency

situated near Jawan Nagar Khada whose owner has also filed a complaint to the effect and that the watchman PW of the Uday Gas Agency has also proved the said fact. It is proved that these cylinders were procured by the unlawful assembly in an unlawful manner which were used in commission of crimes. PW-198 proves damages in the morning in the Muslim Chawls, entire chalws vehicles, households, etc. as described were all burnt.

Thus in nutshell in the morning murders, attempt to commit murder, simple hurt and grievous hurt and offences related to mischief were committed by the mob for which the unlawful assembly was formed.

6B. NOON OCCURRENCES (12:00 noon to 5:00 p.m.):

Main Sites of the offences : All Muslim Chawls opposite Nurani masjid and pitfall of Jawan Nagar known as Jawan Nagar Khada.

The occurrences of the noon related to offences affecting the human body including murders, attempt to murder, damages, offences relating to religion, offences relating to public tranquility, conspiracy, offences against property, of mischief, etc. can be put in capsule form as under.

(1) Murders (Sec.302 of I.P.C.):

The parents of PW-65 viz. Abdul Wahab and Hanifa Khatun were done to death at Hussainnagar at about 2:00 or 2:30 p.m. by burning them alive, crippled son of Mullaji died as

proved by PW-181 who also saw two dead bodies at about 4:00 p.m., husband of PW-231, husband of PW-246, mother of PW-259, Mohammad Aiyub Allabax Shaikh, another Aiyub, crippled Moiyuddin, etc. were also burnt alive.

As has been discussed in Part-4, the dead bodies which were found from the hutments of Jawan Nagar, were all deceased victims of the noon occurrences where Muslim Chawls and Muslim dwelling houses were burnt when the deceased were inside the dwelling houses and that as the P.M. Notes suggest, their deaths were caused on account of carbon particles in their trachea. Many dead bodies were seen here and there by many of the accused.

EXH.221 suggest the death of Supriya Marjid to had been caused in the noon occurrence. Many Muslims were burnt alive in the flames of fire, like EXH.212 proves death of Mehboob, daughter of PW-79, Salima - the lame wife of PW-79, etc. are among the murders committed in the noon occurrence. In the facts and circumstances, this seems to be a death in the noon occurrence.

(2) Injuries (Sec.323 to 326 and 307 of I.P.C.):

(a) What has been described at paragraph (2-B) under the head of Morning occurrence, herein above was the situation prevalent even in the noon occurrence. The only difference was some of the members of the unlawful assembly discontinued in the assembly in the noon and new members have joined the assembly but, the common objects of the assembly working in pursuance of the conspiracy, abetment, instigation all remained

intact as was in the morning occurrence.

(b) As has been described at Part-4 of the judgment, those who have sustained different injuries and have to be admitted in the hospital were also the victims of the noon occurrence. At least four victims among them have sustained grievous hurt including bullet injury and one victim has sustained simple injury in the noon occurrence.

(c) Son and daughter of PW-140, brother of PW-162, other numerous victims sustained simple to grievous hurt at 4:00 p.m. at Jawan Nagar Khada, PW-257 saw scuffling, beating, cutting and killing in the noon, in the noon hours also offences of murders, simple hurt, grievous hurt and attempt to murder and offences of mischief, etc. were committed.

PW-192 saw five Muslims being injured of firing in between 12:00 to 12:30 p.m. She also saw in the noon people being slaughtered, being killed and cut and she also witnessed the situation of stampede, Mehboob Khurshid Shaikh was attempted to murder, who then succumbed to death, wife of PW-79 was given sword blow and was thrown in fire, Supriya Marjid was also attempted to murder, numerous were seriously injured by free use of deadly weapons, hands and legs were cut off of many.

(3) Damages :

PW-114 states about the Muslims chawls to have been burnt at about 5:00 p.m., many witnesses prove burning of entire Muslim chawls like Badar Singh Ni Chawl in the noon,

PW-177 prove the houses of Muslims to have been burnt and threatened to kill children of Muslims, PW-219 saw the use of gas cylinders to get it bursted in the dwelling houses of Muslims, PW-224 saw the occurrence of Jawannagar where the Jawannagar wall was demolished, several Muslims were cut, killed, burnt there, the mob unduly entered into Jawannagar, PW-225 saw free use of deadly weapons in the Jawannagar Khada in the noon and many persons to have sustained serious injuries. PW-260 saw burning tyres, mob to have been burning Muslim houses, PW-181 saw burning vehicles, burning rickshaws, etc. PW-149 saw the mob breaking the wall of Jawannagar and unduly entering Jawannagar with deadly weapons wherein, A-1, 5, 26, 46, etc. were actively participating.

PW-143 saw Muslim chawls being burnt, gas cylinders being bursted in the houses, his car being used to break the wall of Jawannagar, the mob having been unduly entered with the weapons in Jawannagar.

PW-191 saw the mob breaking the wall of Jawannagar, scattering the things to pieces, destroying and damaging, beating, killing and burning the houses.

PW-229 proves the Muslim chawls to have been burnt, looted, ransacked, destroyed in the noon occurrence.

Thus in nutshell in the noon, murders, attempt to commit murder, simple hurt and grievous hurt and offences related to mischief were committed by the unlawful assembly formed.

6C. EVENING OCCURRENCES (5:00 p.m. onwards):

Main sites of the offences : The 'U' Shaped place between Gopinath Society and Gangotri Society, water tank area, khancha.

The occurrences of the evening related to offences affecting the human body including murders, attempt to murder, damages, offences relating to religion, offences relating to public tranquility, conspiracy, offences against property, of mischief, etc. were committed.

As has also been proved in the evening, instances of committing gang rape on PW-205, rape on Muslim women and outraging their modesty have also occurred which can be put in capsule form as under.

(1) Murders (Sec.302 of I.P.C.) :

About 58 Muslims were burnt, dead bodies were found from the place known as khancha where the victims were murdered by killing and burning. Family members of PW-37, 72, 156 (9 family members), 158 (who saw 13 murders), 160, 161, 162, 151, 113, 114, 247, 181, 198, 209, etc. Shahrukh, Nasim, Noorjahan, Saliyabibi, Subhan, Muskan, Adamali, Mumtazbanu, Rabiyabibi, Farhana, Gosiabanu, Akram, etc. were all burnt alive at the site of the water tank and that from the oral, documentary and circumstantial evidence, all of these victims have been clearly proved to have been done to death by their brutal murders at the site.

EXH.662, 207, 214, 221, 203, 1333, 1454, 2063, 2064, 2041, 1303 are all the inquest and identification panchnamas which prove these numerous deaths to have been committed in the evening occurrence. 58 deaths were committed at the same place as can be seen from EXH.662 whereas, 9 persons were succumbed to death who were taken to Civil Hospital for their treatment.

Upon appreciation of EXH.662 (inquest panchnama of 58 dead bodies) and the testimonies of the panch witnesses viz. PW-21 and 22, it stands proved that the time of the occurrence is of 6:00 p.m. and the mobs came from towards canal with weapons and that many of the Muslims were cordoned there.

Inquest panchnama EXH.224 prove the death of Sarmuddin Khalid Noormohammad.

PW-191 saw death of 58 persons at this place. PW-191 saw the death of his wife Bilkishbanu and daughter Khairunisha in the evening occurrence.

Daughter of PW-156 died in the occurrence.

Three children of PW-114 and PW-137 were done away in the Khancha.

PW-198 states that mother Mumtaz, wife Gosiya, Son Akram, aunty Rabiya, Reshma, Farhana, Jadi Khala, Shabbir, Mehboob and Saira died in the evening occurrence, 6 family members of PW-90 were also done to death, nine died from those who were admitted in the hospital for their treatment for

grievous hurt sustained by them which also proves attempt to murder them.

(2) Injuries (Sec.323 to 326 and 307 of I.P.C.) :

(a) As is clear from Part-4, at least about 16 victims have sustained grievous injuries and 4 have sustained simple injuries in the evening occurrence only.

(b) PW-205 was a victim of gang rape and as has been discussed and held at Part-7, other Muslim women were also subjected to rape. It is different that commission of rape has not been proved except against A-22 who has confessed his crime to have raped Nasimobanu.

(c) Attempt to murder of many many family members of different PW like daughter Supriya and son Yasin of PW-156, who were admitted in the hospitals was committed. Sister, neighbour of PW-158 were all subjected to attempt to commit their murders, several children and women were cut, killed and burnt alive.

158 has witnessed about 12 victims to have sustained different fatal injuries including he himself was also injured at Khancha. Among those who were admitte din the hospital, about 9 died as they succumbed to the injuries sustained by them at the Khancha. As is proved on record, 27 victims were severely injured with an intention to kill them and with knowledge that in the process, the victims would be killed.

PW-176 has seen A-25 and A-28 while burning the

Muslims hidden near khancha who also saw numerous dead bodies in the evening occurrence.

PW-191 testifies that his children had to take long treatment for about 2 months which is obviously the case of grievous hurt, he also states that 28 persons were taken by the police for the treatment wherein, on the way 2 women died and 9 victims died during the treatment, he also testifies that 12 live persons were took out from near the flames of fire and after the police reached at the site, more 14 were also saved at his instance.

(3) Damages :

In the evening many Muslim houses, household, vehicles were burnt. Damage of huge amount was caused. In the evening also many dwelling houses were burnt and even some of the vehicles were also burnt in the occurrences. As PW-149 testifies, many witnesses have seen huge mobs with lethal weapons like swords, scythes, iron rods, pipes, tins of kerosene and petrol, etc.

Thus in nutshell in the evening, murders, attempt to commit murder, simple hurt and grievous hurt and offences related to mischief, gangrape, rape, etc. were committed by the unlawful assembly formed.

7. This Court opines that the printed applications coupled with loss damage analysis form, seem to be aiming at prayer for compensation and restitution as, it is the printed prayer in the complaint application itself, which reflects that

ultimately these are compensation applications. It is suggested by defence that police wrote these complaints - applications and analysis forms, but firstly, as it is printed, it is doubtful whether the police would bear such expenditure. Secondly, if it was written by the police then, why was it sent to Police Commissioner and why the concerned police did not initiate the investigation. Thirdly, there are such mistakes in these applications which would not be normally committed by police – for e.g. in Exh.465 given as I-C.R.188/02, the date has been stated to be 5/2/2002 - which must be 5/3/2002, the word complaint application has been used and not only complaint which is not the word of police. In the prayer, restitution has been sought and not merely to punish the accused etc.

Hence, this seems to be the work of some inexperienced, untrained persons who did not know how to write down police complaints and how to invoke criminal justice delivery system. These are not noted as a result of systematic interrogation of police hence, from these complaints – applications, omissions etc. of any of the PW, cannot be judged.

8. In one of these complaints, signature of the wife is taken in the complaint given by husband. It is doubtful that this kind of mistake would be committed by the police. In fact, it is nowhere on record as to who wrote these complaint applications, was it done by some Social Worker or by any NGO? In any case, these are at least not written by police. It is therefore, not safe to treat these complaint applications as earlier statements recorded by the Investigating Officer.

9. Since this chapter is allotted to appreciate the testimony of the occurrence witnesses, it needs to be recorded that it is not much in dispute that these occurrence witnesses and those witnesses who have involved only the deceased accused have no axe to grind against any of the accused and that, they admittedly, do not bore any illwill or malice against any of the accused. As such, malice or illwill in the mind of most of the PW has not been noticed but, this is more applicable in case of the occurrence witnesses since, even the defence has no case about any illwill or malice nurtured by these witnesses against the accused. These witnesses can therefore, safely be called to be independent PWs. Even these accused have very clearly testified that the huge mobs they have witnessed on the date of occurrence were the mobs of Hindus. It is nowhere brought on record that the attacking and assaulting mob was of any other community than Hindus. As against that, all the victim witnesses have very positively stated that the tormentor of the crime were none else but, members of huge mob of Hindus.

There are many witnesses who have witnessed morning as well as evening occurrences, all of which have been narrated in great detail by the witnesses, the gist of which has been given herein above.

10. Upon analyzing, it is clear that about 52 PWs among these occurrence witnesses have witnessed the occurrence that took place in the morning at the site. What is included in the monring occurrence has already been discussed and decided at paragraph 6A herein above.

(a) PW-1, 2, 38, 40, 41, 45, 53, 55, 57, 58, 59, 60, 61, 62, 64, 67, 68, 74, 77, 78, 80, 85, 86, 87, 88, 89, 91, 92, 93, 111, 151, 152, 153, 154, 155, 159, 160, 163, 164, 165, 205, 206, 207, 214, 225, 240, 246, 251, 254, 255, 324, 325 witnessed the occurrences of morning.

(b) PW-62, 65, 66, 69, 80, 151, 154, 161, 163, 240, 259, about 11 PWs have witnessed the occurrence of the noon as mentioned at paragraph No.6B herein above.

(c) PW 61, 91, 92, 93, 151, 152, 153, 155, 159, 160, 161, 163, 164, 165, 205, 206, 225, 240, 246, 249, 254 and 325, i.e. about 22 PWs have witnessed the evening occurrences on that day at the site.

(d) PW-62, 80, 151, 154, 163 and 240 i.e. about 6 PWs have seen morning as well as noon occurrences.

(e) PW-61, 91, 93, 151, 152, 153, 155, 159, 160, 163, 164, 165, 205, 206, 225, 240, 246, 254 and 325 i.e. about 19 PWs have seen the occurrences of the morning as well as of the evening.

(f) PW-151, 163, 240 have witnessed the incidents throughout the day of morning, noon and evening of that day.

This shows that even according to the occurrence PWs, who do not implicate any of the accused in the crime have witnessed the horrifying incidents or occurrences happening unceasingly throughout the day.

11. Some of them have also stated about doing away the Muslims to death which they witnessed near Gangotri society after 06:00 p.m. which is obviously with reference to the Water Tank incident or *khancha* incident or place which was in U shape in between Gangotri and Gopinath societies.

12. It is clear on record from the testimonies that, most of the witnesses are from Karnataka who are not fluent in Gujarati, were terrified on the day, they were constantly wondering to save their lives and finding out a shelter to hide themselves, many of the victims could not save their lives, there was screaming all around, "Save, Save" and "Kill, Kill" were only heard, it became day of mass murders.

13. It is notable that the gist of the depositions is, every Muslim was gripped with tension, was crying and seeking mercy, children were picked up from the laps of their mothers and were thrown in the fire, Muslims had misfortune to witness dreadful and devastating crime committed in these riots from the terraces on which they were hiding, from the cement-nets of the terrace of Gangotri Society, most of the houses at Jawan Nagar were roof topped, but whichever house like Pinjara had the first floor, lot of Muslims went there to hide themselves.

14. It is clearly emerging from depositions that Muslims lost their properties, which they had accumulated with their hard earning, as everyone of them was a small labourer; everything that was gained by sheer swats was evaporated in fraction of seconds in these terrific riots. It was altogether a situation of nervous break down for Muslims.

15. The PWs have also highlighted that ultimately, those who could escape death were all taken to Relief Camps by police at late night and those who were seriously injured were taken for treatment at Civil Hospital. In case of minor injury to the victim, outdoor treatment was also offered at the camp. The victims have experienced seeing many dead bodies lying on the roads on that night while they were escorted by the police to take them to Relief Camps.

16. In the cross-examination it is questioned to the PW to raise doubt against his deposition that his injury certificate or that of his relatives have not been secured and produced by the PW. The learned cross-examiner forgets that Almighty has given inbuilt self curing mechanism in the human body, which works at its best to cure. Hence, in every case where treatment was not taken, the veracity of the injured cannot be doubted. Moreover, as has emerged on the record, minor treatments might have been given at the Relief Camps.

17. After few days, printed complaints - applications along with loss-damage analysis forms were filled in by the victims and as appears from the said applications, these were sent to Police Commissioner's Office, which were in turn sent to respective Police Stations.

18. The perusal of the complaint applications reveals that these applications are of March 2002. The complaints were like for missing father (Surmuddin). This is on record at Exh.532 of PW 78 which too, is printed complaint that father (Surmuddin) was missing from 28/02/2002. The complaints are of gang-rape, slitting stomach of a pregnant woman, killing

helpless crippled boy, helpless crippled old woman etc.

19. The interviews by Media, visits of V.I.Ps, of N.G.Os etc. were started, but the Muslims who became penniless within a day had to stay in camps as community living. They had to reside there for months together.

20. Almost all the PWs were cross-examined. They were cross examined on topography, on improbability of the occurrence, on their veracity and on the issue that some of them did not file complaints etc., along with numerous common questions dealt with in Part-2 of the judgement, which were questioned to eight of ten PWs.

21. In cross examination, the PWs have replied tallying contents with their chief examination. Some of them were crossed on having no certificate under Bombay Shops and Establishment Act, the population of Muslims was of about 1300 families, challenging the contents of their complaints and panchnama of damages, verification of the complaint filed by the family member, so called contradiction on that, on topography of the site, challenging the fact and figure on his business, the position of terrace of Gangotri society, on location of Jawan Nagar, since no injury certificate is produced no injury was caused, and that the PWs are giving false testimony to get handsome compensation etc. etc.

In these occurrence PWs the complainants of I.C.R. No. 111, 117, 127, 129, 153, 161, 176, 181, 183, 185, 187, 188 etc. all of the year 2002 registered at Naroda Police Station, which all were merged in I.C.R. No.100/02 by the order of the

then Police Commissioner of the city of Ahmedabad, have also deposed.

22. The cross examination of most of the PWs like these occurrence PWs who even do not implicate any accused in their testimony, was also quite lengthy but the PWs could withstand it and in the opinion of this Court through the cross examination of these PW nothing has been elicited which in any manner destroys or even gives a negligible jerk to the prosecution case.

23. In the opinion of this Court, nothing has been elicited from these PWs whereby any doubt can be said to have arisen against the prosecution case. They have mainly deposed about the horrifying and terrifying occurrences of the entire day. An attempt was made to falsify the witnesses on the count of their printed complaint application, which issue has been dealt with in great detail in the discussion under the head of 'General Appreciation of Evidence' as well as in this topic itself. Suffice it to say that this Court is not at all impressed and has found no substance in the cross-examination on this count.

24. It is really not revealed on record as to who did this task of filling in the printed complaints-applications and through which agency, this was done. As far as, most of the contentions and signatures of the victims are concerned, it is all admitted by the victims. Be that as it may, but the point to be brought home is the cross-examination was all on the points which have been dealt with under the topic of 'general appreciation of evidence' noted in the Part-2 of this Judgment hence, the same need not be appreciated again.

Exh.1773, the complaint in this case, has very clear support from the depositions of these occurrence PWs.

25. This Court is of the firm opinion that all these witnesses were very natural witnesses. They have not tried to rope in anyone and that they have fairly stated that they do not know anyone from the mobs of miscreants. There is absolutely no reason, not to believe them when the sting of probability nowhere breaks down in their testimony. Though they were cross examined at length, their version does not become doubtful. In fact, all these witnesses were found very truthful, dependable, natural and were genuine victims of the occurrence of the day who help in proving the prosecution case beyond reasonable doubt.

[C] <u>Important Aspects From The Depositions Of Occurrence Witnesses, Related To Injuries And Deaths</u> :

(b-1) Many of the witnesses and their family members have been injured in the occurrence; many of them could not secure any injury certificate; those who were needed to take treatment at the Relief Camp, have been enlisted differently. Hence, here only mention has been made of those who did require treatment at camp. It is an admitted position that the services of medical aid were also available at the Relief Camp. Those who were seriously injured were taken to the hospital.

(b-2) These witnesses are injured witnesses, hence they have no reason to speak lie. Here an important point is be

noted that these are the witnesses who have not involved any of the accused, but their testimonies only focus on the seriousness of the entire occurrence along with agonies and suffering undergone by the them.

(b-3) The deaths revealed by PW of their deceased relatives, have been noted.

(b-4) The cross-examination is mainly to falsify, to challenge the veracity, to attack the credibility of the PWs. When it is observed and firmly believed by this Court that the PWs are truthful, dependable, giving genuine account of the three classified occurrences, no fruitful purpose would be served to weigh the cross-examination when they have not roped in any of the accused.

The statement of 2002 and topography have even been subject of the cross, both of which have been dealt with in Part-2 of the judgment and hence, need not be repeated.

(b-5) The glimpses of depositions revealing deaths, injuries and damages are as under:

(1) **PW 2** has suffered damages to his house, his grocery shop was looted and fridge, TV, ornaments, cash etc. were stolen in the occurrence. Thus, this witness is injured witness as well as witness who has suffered damages. (para-6)

(2) **PW-40** was also injured in the occurrence. (para-5)

(3) **PW-59** himself is injured in the occurrence (Para-3 and 13).

(4) **PW-60** was himself injured and injury was also caused to his sons, Aiyub and Mehboob. Both of them have taken treatment in the Camp. (Para-4 & 7)

(5) **PW-62**, husband Usmanbhai Shaikh, elder son and younger son were injured and were treated at camp. (para-10)

(6) **PW-64**, himself and one son were injured, treated at camp. (para-7)

(7) **PW-65** has also witnessed homicidal death of his parents in the noon occurrence which has been discussed at an appropriate place.

(8) **PW-66**, all three sons of the witness were injured who were treated at camp. (para-4 & 5)

(9) **PW-67** states that two of his sons were injured in the occurrence who were treated at camp. (para-4)

(10) **PW-68** states that her husband and her younger brother-in-law were injured in firing. (para-5 & 10)

(11) **PW-69** states that the witness was injured in stone-pelting and was treated at camp. (para-4)

(12) **PW-74** states that he is an eyewitness of the homicidal death of his wife wherein she was injured by sword blow and pipe blow and thereafter, by pouring kerosene or petrol, she was burnt alive. (para-7)

Wife Salimabanu Kasamali Saiyad who was lame and had only one eye, was done to death in the noon occurrence.

Since Salimabanu was not heard for long and/or not seen by those who had seen her alive or heard about her, she is held to have died in the occurrence.

(13) **PW-77** states that he was injured and treated at camp. (para-4)

(14) **PW-78** states that father of the witness was attacked by sword, pistol and spear by the men of the mob. They have also poured kerosene or petrol which was with them and have done his father to death whose dead body has not been found, who also, is not heard about or seen by any of the family members (para-5).

Father, Sarmuddin Shaikh is held to have been died in the occurrence.

(15) **PW-80** states that the witness has sustained burn injury in the occurrence and was treated at camp. (para-3 & 5)

(16) **PW-85** states that her daughter Asma was injured and was treated at camp. The entire house along with all household was burnt in the occurrence (para-14 & 15).

Sister of the PW Farzana was also burnt. He learnt that mother Mumtazbanu, sister-in-law Gosiyabanu, brother Akram and Farhana were done to death in the evening

occurrence.

(17) **PW-86** states that the witness and his son Mohammad Halim, both were treated at camp. (para-5)

(18) **PW-88** states that the entire house along with the household was damaged and destroyed and looted.

His son Ahmed Badshah was injured in firing and hospitalized in V.S. Hospital. (para-6, 7)

(19) **PW-91** states that the entire household of the witness was damaged and destroyed along with his vehicles etc. (para-9)

(20) **PW-92** states that the wife of the witness (Sufiya Begam Abdul Rahim Luhari) was done to death in the occurrence, but her dead body could not be found. There is nothing to hold that she was heard about or seen by anyone. Even she is also presumed to have been died.

Entire household was ransacked and damaged. (para-8, 9)

(21) **PW-93** states that her daughter Reshmabanu has not been found and the witness has learnt that her daughter died in the occurrence as she was burnt alive.

Even the entire family of the neighbour of the witness, named Harun, was done to death in the occurrence. Reshmabanu, the daughter of the witness is presumed to have

been dead.

Daughter, Parvinbanu who was injured in the occurrence was treated at camp.

The entire household of the witness was looted. (para-8, 9, 14, 15).

(22) **PW-111** states that house was damaged and destroyed.

The children of the witness, Mohsin and Afrinbanu and mother-in-law of the brother of the PW Mehboobi and Noorjahan, wife of brother Mohammad Hussain were all done to death in the occurrence, out of the four the burial receipts for daughter Afrinbanu and mother-in-law of the brother Mehboobi was made available to the PW but for son Mohsin, the PW has neither heard nor seen him. As far as the children of the witness are concerned, the witness needs to be held as a responsible person to depose before the Court that they were done to death in the occurrence. Believing the same, both the children, Afrinbanu and Mohsin have been presumed to have died in the occurrence. (para-12, 13)

(23) **PW-151** states that son of the witness, Firoz and mother-in-law Fatima of the witness were burnt alive and done to death in the evening occurrence at the water tank.

At this time, the witness was crying for having lost her newly born son aged only 12 days. The witness was beaten with weapons and burnt and her 12 days' old child was also

burnt in the occurrence. The witness states that her mother-in-law, Fatima and her son Firoz have not been heard about or seen thereafter, hence they are presumed to have died in the occurrence. The witness and her son Sohaib were given treatment at V.S. Hospital. (para-8 onwards).

(24) **PW-152** states that this witness went to the water tank area and was injured there. Upon her falling down, her child slipped from her hand. She was hurt in stone pelting and burnt there because kerosene, acid etc. were being thrown on them from the terrace. The witness was seriously injured, she was treated at Vadilal Hospital; her husband and her children, Reshma, Samir and Mehraj were done to death in the occurrence, all of which have been mentioned by her elder sister-in-law (PW 90). This witness is an eyewitness of the entire evening occurrence at the water tank.

(25) **PW-153** states that she is an eyewitness to the water tank occurrence, where she lost her daughter Nilofar since was burnt by the mob, (who was only 7 years of age) by pouring inflammable substance on her. The witness was also severely injured and was treated at V.S. Hospital. (para-9 to 12)

(26) **PW-154** states that this witness himself was injured in the police firing, who has seen the evening occurrence and was also burnt in the occurrence and was treated at V.S. Hospital. (para-6 to 12)

(27) **PW-155** states that she was also burnt and was severely injured who was firstly treated at camp and thereafter she had to be treated at V.S. Hospital. (para-5)

(28) **PW-159** states that he is an eyewitness to the water tank evening occurrence, who himself was injured by hockey blow and burnt and was treated at Civil Hospital for three months (para-7, 8). He testified that sister in law Noorjahan and nephew Mohsin were done to death at water tank - evening occurrence.

(29) **PW-160** is an eyewitness to the water tank occurrence. The brother of the witness, Shamsad was done to death in the evening occurrence. He is neither heard about nor seen thereafter. The witness herself was injured and was treated at Civil Hospital. (para-5 onwards)

(30) **PW-161** is an eyewitness to the water tank occurrence wherein she herself was burnt. Her brother Shahrukh and sister Noorjahan, were separated. Noorjahan died in the occurrence. Her maternal aunt Saliya, her daughter Muskan, her son, Subhan were all burnt and who had died there. (para-8)

The witness was treated at Civil Hospital. (para-8 onwards)

(31) **PW-163** is also an eyewitness to the evening occurrence at water tank. The PW has sustained injuries on account of stone pelting and had to be sutured. The witness himself and his son Yasin were burnt and were treated at Civil Hospital. (para-8 to 10)

(32) **PW-164** had sustained injury in the water tank

occurrence who has sustained fracture. His father was also injured who had sustained head injury and they all were treated at Civil Hospital (para-5, 6).

(33) **PW-165** was injured in the morning occurrence because of the firing who was ultimately treated at V.S. Hospital as, he had sustained very serious injuries (para-6, 7).

In the facts and circumstances of the case, the probability of the PW to have been grievously hurt in private firing cannot be ruled out in the morning occurrence.

(34) **PW-205** is a victim of rape who was attacked by four men with weapons whose left hand was cut off and another hand was also given sword blow. She was also given sword blow on her back, on her head; she was given hockey blow and pipe blow; her dress was torn off; she was thrown on the earth; the string of her *pijama* was cut off by sword; they have made her naked and the men with the sword had raped her there itself; the rape was done by others as well. Thus, it was a case of gang rape. She was admitted to V.S. Hospital where she was treated. PW-84 is her treating doctor whose version supports the version of the witness to have sustained severe hurt by the blunt side of the sword. She is supported by PW 247 who has seen the four men dragging her near khancha.

This witness deposes about the death of her mother-in-law, Abedabibi, her sister-in-law, Sahidabibi, the daughter of her sister-in-law, Gulnaz, brother-in-law, Mohammad Yunus, two sons of brother-in-law, namely Wasim and Salim. (para-13 to 20)

(35) **PW-206** is also an eyewitness to the water tank occurrence where she was attacked and injured. The PW was given blow of blunt weapon and the PW has sustained injuries on back and on head, who had to be admitted to Civil Hospital (Para-8 to 10). This PW has seen burning rags to have been thrown by the mobs who unduly entered in Hussain Nagar, Jawan Nagar and these men of the mob were also hurting Muslims.

(36) **PW-207** was injured because of stick blow in the morning occurrence and was treated at Civil Hospital (para-5, 6).

(37) **PW-214** is an eyewitness to the water tank occurrence. Two sons of the witness, Wasim and Salim, were done to death by burning them alive by throwing them in fire.

The witness herself was burnt and severely injured who even had the signs left out yet, of her injury. She was treated at Civil Hospital. (para-9 to 13)

(38) **PW-225**'s wife, Kausharbanu and mother-in-law, Jenbi were done to death in the occurrence. (para-9, 10)

(39) **PW-240** was injured in the stone pelting, in the occurrence of evening his wife was attacked and burnt there itself; wife Shabnambanu of the witness has neither been heard about nor seen thereafter and is therefore, she is presumed to have died in the occurrence. The witness has suffered lots of damages to his entire household.

The witness was injured in the evening occurrence who was treated at camp (para-8, 9).

(40) **PW-246**'s husband, Abdul Kadir Shaikh was done to death as he was burnt alive in the noon occurrence. Her entire household and house was looted, ransacked and destroyed. (para-10, 11)

(41) **PW-251**'s mother Hajrabibi and two sons viz. Salman and Irfan, were done to death in the evening occurrence.

His wife Sufiyabanu was injured and burnt and had taken treatment at Civil Hospital (para-9 to 11).

(42) **PW-254** himself was injured in the occurrence of stone-pelting.

This witness is an eyewitness to the attack on Nurani and he was Maulvi of Nurani Masjid. (para-8 to 17)

(43) **PW-255** was severely injured in the firing on the date of occurrence; for the entire day the witness and his family has suffered a lot; he was taken by his wife and brother and younger brother from one place to another by dangling him. This witness has sustained severe physical disability of the entire lower part of his body in the occurrence. The difficulties arose from the injuries will have to be suffered by the witness till he lives. His entire household was looted. (para-13 to 18)

(44) **PW-259**'s mother, who was an old and crippled woman has not left the house, but has rather chosen to hide herself in the house. This old crippled woman was taken out from the latrine where the mother had hidden herself and was thrown in burning rickshaw; the mother of the witness had died in the noon occurrence. Since the name of his mother Tarkisbibi Abdulgani Ibrahimbhai has not been heard about or seen even by the witness, she is presumed to have died in the occurrence. (para-8 to 12)

(45) **PW-325**'s husband Abdul Kadar Gulam Rasul was burnt by the mob in the evening occurrence whose burial receipt has been produced on the record. (para-4 to 6).

The remaining witnesses are in fact sufferers of the occurrences and were eyewitnesses to the different occurrences throughout the day. There is lot of shocking material disclosed, but, since these PWs do not implicate any accused, they have been put up briefly.

7. FINDINGS :

1. These PWs have proved, their complaints of the date of riot which are on the record at Exh.142, 143, 148, 268, 291, 323, 384, 346, 347, 383, 457, 437, 445, 453, 455, 465, 782, 532, 553, 569 etc. The homicidal deaths occurred during different occurrences of the different relatives of the occurrence PW have been mentioned at the end of this part.

From almost the undisputed facts, testimonies of these PW, as well as from other PWs who all are found by this

Court to be credible, truthful and natural, and while perusing Exh.1773 - complaint and many other complaints on record, it very clearly emerges on record that :

2. From the testimonies of almost 173 PWs, including these 57 PWs, who are occurrence PWs, it has been proved beyond all reasonable doubt :

(a) That on 28/02/2002 in between 9:30 a.m. and 10:30 a.m. and thereafter, the violent mobs gathered near Nurani Masjid which has started rioting, arsoning and causing disturbances in the Naroda Patia area, the members of the mob have attacked Muslim chawls situated opposite Nurani Masjid, one of the entries of which is facing S.T. Workshop wall which wall begins from S.T. Workshop Gate on the main road and is going upto the curve which takes place after Gokul Nagar Society which is situated after Gopinath Nagar.

(b) The occurrence took place throughout the day viz. in the morning, noon and evening from about 9:30 a.m. upto at least 8:30 p.m. of that day.

(c) On that day, mass racial killings took place wherein many many Muslims were done to death, many became victims and that they have lost all their properties, their dwelling houses, shops, carts, cabins, etc. were looted, ransacked at Patiya, many Muslims were burnt alive in this ghastly crime committed by the men of the violent mobs having deadly weapons on the day, for the entire day in the morning, noon and in the evening, the ghastly occurrences continued unceasingly.

(d) Nurani Masjid was attempted to be burnt, sabotaged, thrown stones. It was damaged and destroyed by these very mobs. The wall which was partitioning Jawan Nagar and Jawan Nagar Khada was demolished at about 4:00 p.m. by the mob.

(e) Almost all Muslim victims were from Karnataka, Maharashtra, U.P., etc. and were not much conversant with Gujarati language.

(f) The death of Muslims have also occurred in firing. There were police firing as well as private firing.

(g) As is clear from complaint Exh.1773, the call of Gujarat Bandh was given by VHP against the death of Kar Sevaks in the Godhra carnage on 27/02/2002.

The Godhra train carnage has given rise to tense situation and it resulted into disturbances almost throughout the State of Gujarat.

The mobs were of about 15,000 to 17,000 persons, the leaders of the mobs were active members of R.S.S., V.H.P. & B.J.P. who were instigating the mobs, were committing crimes and were abetting commission of the charged offences in pursuance of the conspiracy.

(h) In Naroda Patia mobs of violent, vengeful and full of venom were doing riotous activities on that day. The mobs were of Hindus which smashed vehicles, demolished properties,

torched dwelling houses of the Muslims. The mob burnt many Muslims, it were race murders. The death toll of numerous Muslims and injury to Muslims (about 96 persons were dead and atleast 125 were injured) at Naroda Patia in the series of occurrences that took place throughout the day of 28/02/2002 i.e. from about 9:30 a.m. to at least upto 8:30 p.m. (in the complaint Exh.1773 time is 11.00 to 11.30 a.m. for beginning of the occurrences).

(i) The occurrence took place from about 9.30 a.m., onwards in the morning, noon and in the evening upto 8.30 p.m. on the said date spread throughout the day which was done in the same common transaction.

(j) All the deaths and injuries sustained and treated at Camp, have been recorded in the list prepared for the same.

X * X * X * X * X * X * X

CHAPTER-II : VICTIM WITNESSES

Introduction :

The record speaks for itself that, PW 1 is complainant of I-C.R.No.111/02, PW 217 is the son of complainant of the complaint attached with I-C.R.No.111/02 (in the C-Summary record), PW 2 is the complainant of I-C.R.No. 115/02, PW 38 is complainant of I-C.R.No.117/02, PW 53 is complainant of I-C.R.No.127/02, PW 40 is the complainant of I-C.R.No.129/02, deceased father of PW 40 was the complainant of I-

C.R.No.130/02, PW 41 is complainant of I-C.R.No.143/02, PW 45 is the complainant of I-C.R.No.161/02, PW 54 is the complainant of I-C.R.No.163/02, PW 56 is the complainant of I-C.R.No.164/02, PW 55 is the complainant of I-C.R.No.176/02, deceased husband of PW 261 is the complainant of I-C.R. No.177/02, PW 57 is the complainant of I-C.R.No.181/02, PW 73 is the complainant of I-C.R.No.182/02, PW 58 is the complainant of I-C.R.No.183/02, PW 59 is the complainant of I-C.R.No.185/02, PW 61 is the complainant of I-C.R.No.187/02, PW 60 is the complainant of I-C.R.No.188/02, PW 207 and PW 234 are concerned with I-C.R.No.208/02, PW 135 is the complainant of I-C.R.No.238/02. Moreover, there are numerous witnesses who are concerned and connected with either the deceased complainant or deceased victims of the offence. Hereinafter, the victim witnesses shall be dealt with.

1. PW 37 :

(a-1) This witness, through his deposition, proves the police firing to have been done under the orders of Shri Mysorewala and two different victims to have sustained bullet injuries; this witness is an eyewitness of the acts and omissions of the mobs wherein, the accused named and identified by him were present. He has deposed of the involvement of A-22, A-44, deceased Guddu, Dalpat, Bhavani and son of Dalpat viz. A-60. He has identified all the accused except A-60.

(a-2) This witness is an eyewitness of the evening incident of killing of his own son Siddique by the Hindu mobs who was beaten and then burnt and ultimately killed by using inflammable substance. The mob which killed his son Siddique

was a mob wherein all the named accused including A-60 were present.

(a-3) This witness has seen the incident near water tank wherein Sharif Iqbal, son of his maternal uncle, was killed at about 6.30 to 6.45 p.m. This witness is also a witness of damages caused. His household was robbed.

(a-4) Through his examination-in-chief, this witness brings on record the incidents of homicidal deaths of his son and incident of Sharif, his maternal brother, both of whom were killed and for which, he was an eyewitness.

(a-5) At para-8 the PW has stated that Guddu, Dalpat, A-22, A-44, A-60 were leaders of the mob and had weapons in their hands. A-22 had scythe, A-44 had pipe and the PW knew all of them for last ten years.

(a-6) Guddu, A-22, A-44, Dalpat etc. have pulled son Siddique in the Hindu mobs. A-60 has been granted benefit as he was not identified by the PW and no TIP was held.

(b) CROSS-EXAMINATION OF PW-327 I.O. SIT AND PW-37 :

Through PW-327, the I.O. of S.I.T., the contradiction of the witness has been highlighted by the defence. Paragraph-387 of the testimony of PW-327 needs to be perused to decide the substance in the cross-examination of PW-37.

(b-1) Paragraph-12 of the deposition of PW-37 has been

challenged wherein PW has deposed, the gist of which is that, "he and other Muslims were trying to go to their home via Gopinath Society, Gangotri Society etc. At that point of time there was a huge crowd of Hindus near the gate of Gangotri Society. Seeing this, Muslims started climbing up the terraces, but the Muslims who were caught before climbing up, who were at the down stairs, at this point of time at about 6:00 or 6:30 p.m. the crowd was becoming more huge and there was no hope to survive. The teargas shells were bursted by the police, son of the witness departed from him while the witness was coming down from the terrace, he says that six of the persons of the mob have pulled his son into the mob of Hindus, these accused were deceased Guddu, Dalpat, Darbar and A-22, A-44, A-60 etc.

Near the water tank of Gopinath Society this witness's son Siddique was hit by pipe from the backside by deceased Guddu. He was given scythe blow in his stomach and thus had fallen down. At this time, A-44 and other three have pulled him, poured kerosene on him and by throwing mattresses alongwith other inflammable liquid he was burnt, for which the witness is an eyewitness. Ultimately, his son had died and the witness screamed a lot. At that point of time somebody from the mob had stated that `here is a miya'; someone from mob said that `catch catch he is miya'. The witness then escaped to Gangotri Society and had hidden himself.

(b-2) PW-327 has deposed that it is not true that all these facts stated by PW-37 at para-12 were not told to him while recording his statement.

(b-3) PW-327 has stated that the second statement of the witness dated 14/09/2008 was only for getting clarification about the name of the accused and that in the second statement the facts of para-12 is not required to be stated again.

(b-4) This court opines that if the facts revealed in the first statement are not repeated in second statement, which was only clarifying statement, then, no doubt is created about the ring of truth in the version of the PW. It is rather natural.

(b-5) Para-6 of the testimony of the PW-37 was also attempted to be shown as contradiction and/or omissions, but upon perusal of para-390 of PW 327, it appears that the witness has mainly stated therein about the fact that there was mob of Hindus marching towards Nurani Masjid, the members of the mob were throwing burning rags on the Nurani Masjid, they were doing stone pelting, the witness felt danger to his life, the people standing near Masjid have also done stone pelting to save the Masjid, but the Masjid could not be saved and the Masjid was damaged by the mob.

At this point of time of attack on Nurani, he went in the corner near wall of ST Workshop, police firing was done on the Muslims.

(b-6) In the opinion of this Court, the contentions at para-6 reveal the attack on Nurani Masjid, police firing and the witness to have been eyewitness of morning occurrence.

(b-7) PW-327 has admitted that the incident of Sharif is stated before him except the place of the offence.

The witness voluntarily explained that the witness did tell him the fact which has also been noted in the statement of the witness that, the son of his maternal uncle named Sharif Iqbalbhai was killed and the witness is an eyewitness to homicidal death of Sharif Iqbal and that the witness did explain in detail about the occurrence of his son Siddique and then that of Sharif. It is also mentioned that the very same mob has beaten and killed both of them and that except the place of the offence, as far as Sharif is concerned, everything else has been told to police.

(b-8) Admission at paragraph-393 of PW 327 about omission for the name of Samsubhai, does not apparently sound to be material omission.

(b-9) Paragraph 7 of the deposition of the witness has also been challenged. It has been denied by PW-327 that, all these facts were not stated by the witness in his statement.

In this para-7, it is mainly stated that the members of the mob were holding different weapons who were Hindus and the mob was wearing khaki half pants, saffron belts and white vests.

(b-10) In the opinion of this court, even this is not very much material as not only this witness, but several witnesses have stated about all these facts. It is clear that the witness has stated all these facts to PW-327, the I.O. of SIT.

(b-11) PW 327 has admitted that the PW has not told him about the fact that, `the name of the six accused were though told by him, the previous investigator did not write the same'.

(b-12) No importance can be attached to such omission as, it may not click in the mind that it is necessary to say the avoidance of duty of the previous investigator also.

(b-13) PW-327 has denied that the fact of injury to his another son Sheru and Aiyub has also been told to him, in addition to the fact that the witness has stated about the fact that on 28/02/2002 in communal riots injuries were sustained by his son.

(b-14) During the course of the extensive cross-examination, the witness has been given numerous suggestions, which since have been denied, have not been discussed. However, the concerned denials have been taken care of.

(b-15) The cross-examination on the application in SIT and the contentions therein, having not filed any complaint for the incidents of Siddique and Sharif before, having not sought for T.I. Parade, have all been discussed in Part-2 of the judgement, where topic of general appreciation has been written. Hence, it is not repeated.

(b-16) The question of having not stated the names of the accused etc., before the previous investigator, has even been discussed in the said part of the judgement, hence need

no repetition.

(b-17) At para-86 it is suggested by the defence and accepted by the witness that, A-60 is his neighbour and he had seen A-60 many times and he knows him since previously.

In the opinion of this Court, this affirmative statement and the suggestion by the defence, proves prior acquaintance of A-60 with the accused, the effect of which should be involvement of A-60 but, the T.I. Parade has not been held, hence, benefit to A-60.

(b-18) At para-73 and para-85 the witness has been suggested and he has accepted that, he has seen his son Siddique taking bath in blood and thereafter he ran away. In the opinion of this court, this is sufficient to link the mentioned accused with the homicidal death of son Siddique of this PW.

(b-19) In light of all the above, the cross-examination in no way, falsifies the prosecution case.

(c) OPINION:

(c-1) This Court is of the opinion that very vital facts in paragraph - 6, 7, 13, 14 etc. were under challenge but, as is clear, PW-327 has very clearly said that all these facts and mainly about the homicidal death of his own son Siddique and maternal brother Sharif was told to the I.O., S.I.T. and it was also told that the witness was an eyewitness to both the occurrences.

(c-2) It is true that the place of homicidal death of Sharif is admittedly not stated by the witness to PW-327. But, at the same time, 'the mob which has committed occurrence of Siddique has also beaten Sharif', is the sentence which has been spoken by the PW which clarifies the site to be same. The occurrence has also been mentioned and what is not mentioned is the place of offence as far as homicidal death of Sharif is concerned. In other words, same thing has been conveyed by the witness to PW-327. Hence, no omission at all.

This court therefore, does not find any substance in the point raised to show material contradictions and omissions and difference between statement before the SIT and version before the Court, in the testimony of PW-37.

(c-3) It is true that instead of `Dilip-ni-Chali', the witness has told the I.O. that `where at present Naroda Patiya Police Chowky is situated'. If the site is kept in the mind, then, there is no difference between the two places and that both the places are so close to each other that naming one, would include another

(c-4) If the witness has not stated that the previous investigator did not write in the statement what he had spoken, it does not mean that it is any kind of material omission.

(c-5) In the opinion of this Court, what is omitted is not at all material, what is attempted to be shown as contradiction, is in fact not contradicting the prosecution case in any manner and that the PW-37 has been proved to be very natural looking to the difference pointed from his version before IO and version

before the Court.

(c-6) PW-37 is very natural, credible and has not omitted anything material before the IO and that through his oral evidence he clearly proves the involvement of deceased Dalpat and Guddu and A-22 and A-44 in the homicidal death at the evening period, which was committed at water tank and that the witness has also been proved to be an eyewitness to the entire three occurrences, viz., homicidal murder of Sharif and homicidal murder of his own son Siddique by the mob wherein A-22, A-44 were also included as well as the morning incident at Nurani.

(c-7) He has told about the presence of A-60 but, has not identified A-60 before the Court. He has identified A-34 instead. This Court, therefore, holds that through PW the prosecution has proved the homicidal death of Siddique and Sharif at the water tank area in the evening on the date time and place of occurrence beyond all reasonable doubt. The homicidal deaths were committed by the mob where A-22, A-44, as the active members of the mob along with Guddu and Dalpat, were present.

(c-8)A-60, since has not been identified in the court, he deserves benefit whereas, A-34 was identified without being named hence, he also deserves benefit of doubt.

(c-9) The overt act of the accused stands proved beyond reasonable doubt. The witness has properly identified A-22 and A-44. These accused and the PW belongs to the same area hence, inference of their prior acquaintance has been drawn.

(c-10) Para-13 is the incident of killing Sharif at the water tank. At paragraphs 38, 47 and 81, the attitude of police of not writing what was being complained of, is stated.

(c-11) The fact that to save Nurani some Muslims including the PW did stone pelting, is not conveying anything except natural reactions. Anyone would try, at least once, to fight out and there is nothing wrong about it.

(c-12) Para-72 shows that the PW is an eyewitness of morning as well as evening incidents. The facts at para-73 & 85 are clear to draw presumption of homicidal death of son Siddique in the occurrence.

(c-13) No substantial challenge has been made to the parts of version mentioned above. All the said parts of the chief are found credible.

(d) FINDING OF PW-37 :

(d-1) Presence and participation of A-22, A-44, deceased Guddu, Dalpat and Bhavani stands proved in committing homicidal deaths of Siddique and Sharif in the evening occurrence beyond reasonable doubt.

(d-2) The PW is also eyewitness of morning occurrence.

(d-3) A-60 is granted benefit of doubt qua this PW.

(d-4) The house of this PW was robbed and damaged.

2. PW-56 :

(a) The gist of the examination-in-chief of PW-56 is that, on the date of the incident at about 9:15 a.m. when she came out, she had learnt that there was riot outside, people were torching Nurani Masjid and were pelting stones on Nurani Masjid. She had seen the mob burning everything. At about 12:00 noon, she had started for Gangotri along with her children; she had seen men of the mob outside; she has specifically stated that in the mob, the Chharas were present, who are residing near her house (this is one more instance by which it stands proved that the witness and other witnesses were residing in Muslim chawls and they knew the accused very well since they were residing around their residences).

(a-1) She has seen the persons in the mob who were residing near her house, taking away her pet goats and looting their houses. She knows one such person who had stolen her goats. According to the witness he is A-22. The other Chharas have also done looting and robbing.

(a-2) The witness went to the terrace of Gangotri where, her family members were with her. She was injured in her chest during stone pelting. Her daughter was also injured on her left forehead in the stone pelting. She has filed her complaint at Exh.449. The panchnama of damages in her house was also drawn. The witness has identified A-22.

(a-3) The presence and participation of A-22 as a member of mob has been brought on record by this witness.

(b) CROSS EXAMINATION :

(b-1) The witness was cross-examined on topography and about the probability of her being an eyewitness.

(b-2) As far as the defence of topography is concerned, it has been dealt with in Part-2 of this judgement, hence need not be repeated.

(b-3) As revealed in the cross, it is true that the witness is not knowing the name of the son of her employer. But then, it is not material.

(b-4) The witness has admittedly stated before the SIT that, she ran away through the open farm and then she remained at the place where she was hiding. The conduct of PW is very natural.

(b-5) The witness has not seen as to, who has beaten whom and who has burnt what after the noon hours.

It is notable that no use of the part of the cross when, the witness has not stated anything about the occurrence after noon hours. She has only stated about the mob having looted her house and having stolen her goats and that too, before noon hours when she came out. Hence, such part of the cross-examination does not coin a point because of which the witness can be disbelieved.

(b-6) The cross examination on the point of not having

filed complaint, has also been dealt with as to what could be the psychological conditions and why one would not give names of the accused in one's complaint at that point of time, when, every Muslim was frightened.

(b-7) It is true that in the complaint the witness has contended that the offenders were people of Chhara Nagar and Krishna Nagar and she has not named any accused. But, considering the facts and circumstances of this case and more particularly since this court has found that previous investigation is not reliable, it is all indeed, not important or not relevant. This is not sufficient to hold that the witness is not a witness of truth.

(b-8) In the statement before the SIT she has given the name of A-22, the fact of her seeing and knowing him doing the acts and omissions complained of even before SIT, seems to be sufficient. The witness is found to have not been resiling from her statement before SIT, which is the only genuine earlier statement of the witness.

(b-9) In the cross-examination the aspect of T.I. Parade has also been touched, but, that has been dealt with and since the witness admittedly is knowing A-22 since previously, the question of T.I. Parade fades away.

(b-10) The suggestion at the end of para-28 that, name of A-22 is popular in her area and the fact that there are several Chharas in her area itself, is suggestive of the fact that the witness is residing in the area where Chharas are also admittedly residing, which is a strong circumstance proving

the prior acquaintance of all the PWs with the Chhara accused.

(b-11) On page-16, the witness has made a voluntary statement that she knows A-22 for last eight years. The fact of not stating about injury of herself and her daughter in her complaint or to SIT is not material as it is not related to the accused and omitting it does not prejudice the A-22. Moreover, nothing from the previous investigation is found reliable, hence, the said aspect needs no discussion.

(c) OPINION :

(c-1) This court is of the firm opinion that there is no material in the cross-examination which can impeach the witness or the credibility of the witness can be said to have been shaken. However, there does not appear any mens rea required for theft as it does not tally with the common intention and object, the accused were sharing. The witness is only supporting the prosecution case and that she is an injured eyewitness, she has spoken very naturally, there is no reason to disbelieve her, she is found credible.

(d) FINDING OF PW-56 :

(d-1) PW-56 proves the presence and participation of A-22 in the morning occurrence beyond all reasonable doubt.

(d-2) This witness, like all other PW, also helps proving date, time and place of the occurrence and presence and participation of the violent, unruly and armed mob in morning occurrence.

3. PW-65 :

(a) This witness is an occurrence witness who, at the time of the incident, proves to have been residing at Millat Nagar, Shah-E-Alam. This PW came to the site of the occurrence where, at about 2:00 or 2:30 p.m., he saw the occurrence of killing of his parents by the mob. The site of the occurrence is near Hussain Nagar Chawl when he saw his old parents to have been coming to approach the main road taking support of each other. There his father was caught hold by one person and the tin of inflammable substance was thrown on his parents and another person has thrown burning rags on the parents of the witness. He has witnessed the homicidal death of his parents by the mob, he could not go to save them since he had an apprehension that if he would go, he would also be killed. The witness further states that he went to identify the dead bodies of his parents, but could not find them as the dead bodies were unidentifiable. There was collective burial ceremony of all such people who died in riot and the witness consoles that his parents also must have had their burial ceremony in this collective burials.

(b) CROSS-EXAMINATION OF PW-65 :

(b-1) It is clear from the cross-examination that though the witness is a resident of Shah-E-Alam, since he came to pick up his parents who came to Patiya, he has observed the S.T.Workshop wall, the net above the wall and the topography of Jawan Nagar and Hussain Nagar and the visibility of site of the occurrence from where the witness was standing. This

reveals the witness is credible one and his observations can be relied upon.

(b-2) The contradiction at paragraph 13 of the time of reaching at the house of Ashrafbhai is absolutely immaterial contradiction.

(b-3) At paragraph 16, the defence itself is suggesting that the mob of thousands of persons was marching towards S.T. Workshop. This proves the prosecution case.

This Court is not ready to believe that in such rush, one cannot see one's relative or dear and near person on the road. In such calamities, the first who comes in the site is always dear and near person and here the witness specifically came to search or to pick up his parents, then why would he not see his own parents. Moreover, if paragraph 31 is seen, the witness has clarified that where the incident of his parents had occurred, public was not dense at that place.

(b-4) What has been established in the cross-examination at paragraph No.17, has been attempted to be contradicted at paragraph 18. This is not the only illustration of such practice, it has been repeated numerous times by the defence. This is indeed not penetrable as, at times, the defence is creating the ghost in the cross examination and then trying to kill the very same ghost.

(c) OPINION :

(c-1) In light of the above discussion, it is too clear that

the witness proves the homicidal deaths of his parents in the noon incident whose names were Abdul Wahab and Hanifa Khatun.

(d) FINDING OF PW-65 :

(d-1) The homicidal deaths of Abdul Wahab and Hanifa Khatun stands proved by the PW eyewitness, beyond all reasonable doubt to have been committed in the noon incident at about 2:00 to 2:30 p.m. near or at Hussain Nagar chawl by the mob of the noon occurrences.

4. PW-72 :

(a) The gist of the examination in chief of the PW is as under :

" I am resident of Naroda Patiya from birth, was residing at Pandit-Ni-Chawl in 2002. I came to Patiya to celebrate Idd at my mother's house, whose name is Kudrat Bibi, mother was serving at Cotton Factory, my mother went on job at 8:00 a.m. at Chhara Nagar. mother came back at 9:00 a.m. as her employer told her that since it is Bandh, go back to home. Mother saw mob with weapons, mob was destroying and damaging near Nurani Masjid and the shops were being closed by the mob.

My Brother went to mosque to take fetch his children who had gone there to study Quran-E-Sharif, brother brought his children safely, then after the I and my family members came outside to see, we saw from the street that the

mobs of Hindus with weapons were damaging and destroying everything, they were torching Nurani Masjid and were destroying shops, carts etc., seeing everything and hearing that even Maulana of the mosque was beaten, we came back to home.

We had hidden ourselves in our house, at about 12 noon, we learnt that the mob is approaching our chawls, hence we left the house, we were going to Jawan Nagar there my sister Zarina is residing, we went to her house and sat there for 2 to 2 1/2 hours.

Having learnt that the mob is even coming to Jawan Nagar, we also left the house of Zarina and went to S.R.P. Quarters where, we were not permitted to go inside though requested, the policeman over there had given a blow of stick on my mother's legs.

We went to Gangotri where we went inside the shop which had shutter and we sat there where so many persons were sitting, we saw Bhavani, Guddu, Shehzad and Manu at that place, the four of them told us that they are arranging for our meals, Bhavani took us to Gopinath where we sat on terrace where too much noises started coming. We learnt that the mob is coming to this side, so we left that place and went to another terrace. There my mother told Bhavani 'you take all our property but show us the way to escape', Bhavani told that he is showing the way, there was tremendous rush, I was parted from my family.

After I departed from my family members, I saw my

family members going ahead and I also saw Bhavani to have given signal to the mob about the presence of my family members by showing them to the mob who had weapons.

I saw Guddu Chhara, Bhavani, Shehzad, Manu and Suresh in the said mob who have beaten my family members, they were helping the mob in burning, my family members were burnt alive by pouring kerosene, my nephew aged 3 months was also thrown in burning fire. Upon seeing this, I had hidden myself on terrace.

I saw the burning people shouting for help and yelling to save them. I also saw burning of other Muslim people by this mob. In fear to be killed, I sat on one terrace and saw everything.

I heard people talking about Jadi Khala and Hasanbhai Golawala to have been burnt.

I also saw one handicapped boy of our street to have been burnt for not speaking name of Ram. He was burnt alive by pouring petrol. While I was on the terrace, police vehicle came which took me to the camp. My nephew - Safiq Ahmed, my sister-in-law - Bibi Banu and niece - Parvin received grave injuries. Safiq Ahmed was admitted at V.S. Hospital as he had sustained serious injuries.

On the next day, I learnt that my mother Kudratbibi, brother Mehboob, younger sister-in-law Jubaida, my nephew Mohammad Asif were at Civil Hospital. After some time, they had died at Civil Hospital and were buried at Ganj Shahid

Graveyard. Dead body of my mother, brother and nephew were not available whereas dead body of my sister-in-law was available. My statement was taken at SIT. I could have identified Bhavani and Guddu had they been alive, but they had died. I know A-22, A-26 and A-28, but six years have passed, so I will try to identify. - - - - -"

(b) The witness has correctly identified A-22, 26 and 28 by even calling them by their names.

(c) If paragraph 12 of the deposition is seen, then, it is clear that she is the eyewitness of the killing of her family members, wherein Guddu, Bhavani, A-22, 26 and 28 were there in the mob. The family members of the witness were burnt alive by pouring kerosene. The nephew aged 3 months was also thrown in fire alive, when the witness had hidden herself on the terrace.

At paragraph 16, it is clear that mother, Kudratbibi, brother Mehboob, younger sister-in-law Jubaida, Mohammad Asif, Shabbir, Shabnam, Samina and Nadim were all killed in the occurrence.

(d) CROSS-EXAMINATION OF PW-72 :

(d-1) The cross-examination at paragraph 46 makes it clear that the witness had relations with Hindus also. Here the witness was tested by asking whether she knows any Hindu or not, the witness was knowing as she has replied. However, in the next paragraph, the witness has stated that except a few Hindus, she had no occasion to visit the house of any other

Hindu.

(d-2) It is true that the identification parade of the identified accused was not held, but, that merely does not mean that the witness had done any mistake in identifying the accused, in fact the witness begins from the statement that she resides at Naroda Patiya right from her birth, hence prior acquaintance with all the accused is too common as, almost all the accused and PWs are residing in the same area.

(d-3) The cross-examination is on the topic of application to SIT by the witness which has already been dealt with in Part-2 of the judgement.

(d-4) Paragraph 93 clearly shows prior acquaintance of the witness with A-22.

(d-5) The witness has also been confronted on topography which has also, in fact, been dealt with in Part-II. The witness is an illiterate person who came to the house of her mother before 3 to 4 days of the riot and that the speed of happening of the incidents, if is very fast, it may happen that the witness may not be in a position to speak on all details about all the incidents, but merely that does not mean that the witness is speaking lie.

(d-6) Paragraph 68 shows that there were many persons in the shop with shutter and they all were hiding. They were wishing to remain hidden and since they were inside the shutter, any other question does not arise.

(d-7) The cross is also on the aspect that whether the details of the incident were given to the organizer of the camp or not.

On asking as to while the witness was at Relief Camp, whether she has seen the political leader, police officers and others as they were visiting the Relief Camp, while replying this question, the witness has volunteered that she has lost her family members and her mental position was not such where she can take note of all such things. This is quite natural.

(d-8) The witness was questioned on different aspects of the area viz. about the topography to which the witness was not found to be conversant. This Court is of the opinion that everyone cannot be expert on topography but merely that does not mean that the witness is lying that she is residing in the area since many years.

It is true that the witness has not filed any complaint about the eight family members of the PW who were burnt alive in the occurrence, but even that does not mean that what is complained before the SIT is falsehood. The witness has stated before the SIT and even stated before this Court that eight members of her family were burnt alive.

(d-9) It is true that the witness has not been injured and as has been confirmed during the cross that she was not hurt or she was not stopped going into Gopinath Society in spite of the fact that there was a situation of pushing and pummeling one another.

It is not necessary that every such witness must have been injured in the occurrence for being believed. It all depends on many many factors. Just because she was not injured or no hurdle was created for her while going inside the Gopinath Society, it cannot be believed that she is not a witness of truth.

(d-10) At paragraph 34, she has stated that the distance between her family members and herself was of 2 to 5 minutes, this shows the distance was too little to remember as to what had happened with her family members.

(d-11) At paragraph 49, she has admitted that until she was informed by her mother, she was not knowing about the disturbances outside and that everything was normal and she has not heard any screaming upto 09:00 a.m.

In the opinion of this Court, the case of the prosecution is such that the disturbances started after 09:00 a.m. only, hence there is no question that before that time, the witness would hear any screaming and would know about the disturbances.

(d-12) The cross is also on the statement made in the year 2002 before the previous investigator, but since the previous investigation itself is not believable, it need not be commented upon.

(d-13) As is revealed, the witness mostly stayed at V.S. Hospital for about a month. Since, her nephew was unwell and

admitted, she did up-down from camp to hospital in an ambulance van which used to come and go from camp. In this backdrop, is it natural that one would be in mental frame work to file a complaint and / or to give police statement.

(d-14) At paragraph 89, the witness reconfirms that she came to her mother's house only to celebrate (before about four days of 28/02/2002, there was idd).

(d-15) In all, 8 family members of the witness had died is a matter of fact, but if paragraph 90 is perused, the statement of May-2002 shows that the statement of the witness before the I.O. in the year 2002 reveals and reports the death of six family members.

In the opinion of this Court, no witness would commit any error in giving number of deaths caused in his / her family, hence, it is obvious that the statement referred and relied upon by the defence cannot be true as, no one would commit mistake in giving number of deaths in the family. This shows how halfhearted and incomplete the previous investigation was.

(d-16) Paragraph 97 clarifies that the witness has stated in year 2002 about the damages caused in the house of her brother.

(d-17) Paragraph 100 establishes the fact that the witness was residing in Naroda Patiya area for long. This shows that she was knowing the accused well.

(d-18) In paragraph 103, the cross-examiner has attempted to focus that PW 52 was not noticed by the witness, but in the opinion of this Court, whether some witness has noticed another witness or not, cannot become a yardstick to believe one PW and disbelieve another.

(d-19) At paragraph 105, the witness admits that at the time of occurrence, it was difficult to identify someone, but that sentence cannot be taken in a meaning that the witness was not able to identify the mentioned accused on that day unless it is specifically elicited from the witness.

(d-20) Paragraph 106 is reconfirming that the witness stayed in Naroda Patiya area for long which shows brilliant probability of her prior acquaintance with many of the accused and her ability to identify them.

(e) In re-examination, the part of the statement of the witness before SIT has been admitted by the witness wherein she has stated about the family members who had died in the occurrence. She has stated that her mother Kudratbibi, her two brothers, Mehboob and Shabbir, her sister-in-law, Jubaidabibi, her nieces Shabnam and Shamina and her nephews Asif and Nadim had died in the occurrence. This shows that the witness is deposing in the tune of her statement before the SIT and that there is nothing on record wherein, it can be seen that the witness is telling something before the Court for the first time which was not told to SIT.

(f) The cross-examination on the re-examination is to the effect that why the husband of the PW who was together

with the PW, has not given statement, even though he has seen the occurrence. This defence has no logic behind it. What is not done is less important than, what is done was not proper or sufficient.

(f-1) At paragraph 116 while the witness was confronted on the fact that two more family members had died but the said fact has not been told to any person within the last six years, the witness admits the same and adds that whom it can be informed, as prior to SIT, no authority has recorded her statement. This reply is, once more, making the mental state of insecurity of the victim clear.

(g) OPINION :

(g-1) The witness is very natural, has obvious prior acquaintance with the accused, is an eyewitness of the death of her 8 family members who were burnt alive by the mob in the occurrence, she is the witness of the evening occurrence, she seems to be a witness of truth, there is no material to doubt her version, her testimony is in the tune of the statement given to the SIT, she sounds to be a credible witness.

(h) FINDING OF PW-72 :

(h-1) This witness proves homicidal deaths of eight family members in the evening occurrence beyond all reasonable doubts which are as under.

(1) her mother, Kudratbibi,
(2) her brother Mehboob,

(3) her brother Shabbir,

(4) her sister-in-law Jubaidabibi,

(5) her niece Shabnam,

(6) her niece Shamina,

(7) her nephew Asif,

(8) her nephew Nadim

(h-2) It is proved that the homicidal death of 8 persons were committed by the mob wherein Bhavani, Guddu, A-26, A-22 and A-28 were present and have participated, who have beaten the 8 persons and that the named accused were helping the mob in burning the 8 family members of the PW who were burnt alive by pouring kerosene and that they ultimately died in the fatal injuries sustained by them in the evening occurrence.

5. PW-73 :

(a) PW-73 is a rickshaw driver by profession. The gist of the examination-in-chief of this witness is as under:

"I am a resident of Badarsinh-Ni-chawl near S.T. Workshop, I reside with my family, I am the owner of the house, we originally belong to Karnataka, I have studied upto Std.10 and I know Gujarati.

On 27/02/02, there was communal tension due to Godhra Carnage and hence, I returned home early on account of call of Bandh, parked the auto rickshaw near the house on 27/02/02 and went to house of Gafurbhai, P.I. Mr. K.K. Mysorewala came in Government vehicle with weapon, two

policemen stepped down from his vehicle and the P.I. informed me that because of Bandh, two persons are being allotted for your protection, I and Gafurbhai arranged for their bed, tea etc. and went to sleep at 10:00 pm.

On the date of incident at about 08:00 a.m., a big mob of Hindus came from Krishna Nagar, I came on Highway hearing the noise of this mob, he came at Jay Ambe Pan Shop, Munnabhai was with me.

The Mob of Hindus was coming from Krishna Nagar towards Nurani which was led by Bipin (A-44), Guddu and his two real brothers (A-1 and A-10). The men of the mob had swords, tridents, spears, revolvers and iron pipes in their possession.

Another mob came from Natraj Hotel to Nurani Masjid, slogans of Jay Shri Ram were recited, the mob was led by Kishan Korani (A-20), Ashok Sindhi (A-38), Suresh Langda (A-22) and Manoj Video (A-41). Manoj (A-41) and Kishan (A-20) had revolvers and other men of the mob had swords, tridents, iron pipes, spears etc. This mob was burning the shops of Muslims besides Masjid and were pelting stone at about 09:30 a.m.

At this time, at about 09:30 a.m., K.M.Mysorewala came, he called both the policemen at Nurani. At this time, Hindus were throwing stones on us and on Masjid. Muslim youngsters were trying to save Masjid by retorting to the stone-pelting.

One policeman for our protection has fired to the point where we were standing from Nurani Masjid, which passed from the shoulder of Sarmuddin Khwaja Hussain, we went to K.K. Mysorewala and appealed him to work as a neutral person. He said that today, 'I cannot protect you or your Masjid, you protect yourself', we were pressurized from above and if I would act against Hindu mobs, they would kill me, police told me that you run away.

From the mob, some people were burning the shops, some were damaging the Masjid, one had started the tanker beside the Masjid and entered it into the Masjid, because of this the gate of the Masjid and Milan Hotel broke down, the mob then marched towards the house of Gafurbhai at about 12 or 12:30 noon, we all ran away to our houses.

At my house, it was locked, in search of my family, I went to the chawls at the backside where I found my daughter and wife.

At this time, a mob came from the Maidan on the backside of my house. The mob came towards Nurani Masjid. I again came back to S.T., I saw Muslim people standing there, the men of mob were coming one by one, we all Muslims went to Gangotri.

At the turning of Gangotri, I saw Jay Bhavani, Tiwari Conductor (A-25) and Dalpat Chhara, who told us to hide ourselves in one godown, we, about 150 persons, were hidden at the godown, after 10 minutes from their talks, I could judge that these three persons will burn the godown. I pained one

child of four years by squeezing him, the child therefore cried. I told Bhavani to open the door as the child wants to drink water, after Jay Bhavani opened the door, we all unitedly came out, but about 15 to 20 persons had chosen to remain there only.

Those who came outside, came near small gate of SRP, but SRP people did not allow us to get inside. We all went to terraces of Gangotri. This was at about 04:00 pm, we sat there from 04:00 p.m. to 08 :00 p.m.

At about 05:00 p.m., one mob came, where Kishan Korani (A-20), Manoj Video (A-41), Ashok Sindhi (A-38) and Suresh Langda (A-22) were there, they burnt the house of Majid in last line of Hussain Nagar, Majid was doing business of small items like cigarettes, bidis etc. Majid had locked his house from outside putting inside 6 to 7 family members who all were burnt alive which I saw.

At about 08:00 p.m., I came down from the terrace, where I saw Bhavani, Dalpat and Tiwari (A-25) taking snacks of Bundi, I told them to give me drinking water, when they told that even they do not have water for themselves. I went back to the terrace.

At this time, those 15 to 20 persons who were left at godown, those who were unable to climb up the wall of S.T. were found sitting near the wall which I saw after the incident of Majid, but before 08:00 p.m. All these persons sitting there were made to go away by Tiniya Marathi of SRP. All these persons never returned and they were killed and thrown in one

dormant well.

Thereafter, I climbed up the terrace and stayed there upto 11:00 p.m.

At about 11:00 p.m., 4 to 5 police vehicles came near the house of Gafurbhai who were giving a call to the persons left out and hidden persons to come down, one of the Muslim was with him, we came out with our families, on the way from Gangotri to Patiya, one burnt dead body was found lying which made me to fall down and sustain injury on my back. We all were taken to Shah-E-Alam, I got my son during this.

I know all the persons I have named, I identified Ashok Sindhi, Tiwari, Manoj, Naresh as brother of Guddu, Kishan, Tiniyo, Suresh Langdo etc.

On 27 and 28, water supply and electric supply were disconnected. I my son, Ahesan Ahmed was injured who was treated at Camp.

During the stay of 8 months at Camp, I came at my home, where I saw my household were robbed and damages and destruction were caused to my house due to fire.

After 8 months, I took one house on rent where I stayed for 4 months. My house was not habitable, it was repaired by Islamic Relief Committee, who also gave me house at Ekta Nagar.

Two policemen in Civil Dress, brought one printed

form and made about 1500 to 1600 persons to fill in the form. I wanted to give names of the accused, but, they did not write all the names and told that, there is queue behind you give detailed complaint later."

Exh.518 is printed complaint of the PW complainant.

The witness has correctly identified A-1, A-20, and A-41 and Guddu for the morning occurrence. The witness could not identify A-10, A-22, A-38, A-44 and A-55 and has wrongly identified A-16.

A-25 has been identified, Bhawani and Dalpat were the three involved in the noon occurrence.

(b) CROSS-EXAMINATION OF PW-73 :

(b-1) The witness was crossed on the application to SIT and printed complaint.

At paragraph 38, it is elicited that the witness was doing rickshaw driving for about 42 years. It was submitted that in spite of the fact that the person is a rickshaw driver, he is unable to say the distance in kilometres between his house and Nurani and between his house and Krishna Nagar.

In the opinion of this Court, it can happen, there is no hard and fast rule that every rickshaw driver must be able to tell the distance in kilometres. The witness however, was able to explain that he can say as to whether the distance could was for the minimum rickshaw fare or not. This is satisfying.

(b-2) In paragraph 50, it has been elicited that Muslim boys did retort the stone-pelting which was done by Hindus first. It is clarified that the counter stone-pelting by the Muslims was to save the Masjid. The explanation in the fact situation is found worth believing.

(b-3) The witness admits that when he went to see Mr. K.K. Mysorewala, no stone-pelting was done on him.

Merely with such admission, it cannot be held that in fact, no stone-pelting was done at the site. On that day no individual was target, the community was.

(b-4) It is admitted position that no identification parade was held for the accused who were identified by the PW in the Court. This point is dealt with in Part-2 of the Judgement, hence repetition has been avoided. The PW has identified A-25, A-41, A-1 and A-20 correctly with whom there is obvious prior acquaintance hence, T.I.P. is not held important.

(b-5) The PW has named A-38 and A-22, but instead of A-38, he has identified A-16 and instead of A-22, he has identified A-34 and instead of Tiniya Marathi, he has identified A-22. Thus, three accused have been wrongly identified. All the three deserve benefit qua this PW as even T.I.P. was not held.

(b-6) At paragraph 55, the PW has described their plight at that time after the riot that they were extremely frightened, were residing in the graveyard and were not knowing the name of the neighbours also, hence the question of filing complaint is

out of question.

(b-7) The witness has also talked about the grip of fear in their minds. He adds in response to cross that in spite of the fact that the Shah-E-Alam is Muslim area, the witness could not muster courage to file any complaint because of fear. This issue of mental framework of the victims has been dealt with at Part-2 of the Judgment.

(b-8) It is admitted position that the witness has not sent any application or any complaint even then after before any authority, but merely that does not mean that what has been told by the witness to SIT is full of falsehood.

(b-9) The witness has voiced grievance for police having not written what they were complaining. At paragraph 64, he complains against the Crime Branch as they were not writing what was being complained of and that they were changing the words. This kind of attitude is not improbable as, it also tallies with the discussion on the chapter of previous investigation at Part-II.

(b-10) The witness is unaware as to who were filling in the gaps in the printed complaints (the PW calls it a ready made format) and who was asking for the information to fill in the gaps. The witness does not know whether all the information given by him was written in the printed complaint or not. In the opinion of this Court because of this the printed application cannot be called earlier statement.

(b-11) The witness states that the incident of Sarmuddin

happened at about 09:30 a.m. on 28/02/2002 (Sarmuddin was hurt in firing). According to witness, the witness knows that he was hurt in police firing.

(b-12) At paragraph 99, the witness has volunteered that he has not told certain facts to the police because he had no trust either on police or Government. This spells volumes about the sense of insecurity the victims developed then.

(b-13) At paragraph 109, it stand proved that the witness has no personal knowledge about the fact stated by him that the people were thrown in a well after being killed.

(b-14) Much of the part of the cross is on the topography which is hardly relevant to believe or disbelieve the witness.

(b-15) It has been elicited that while the witness and other Muslims were in the godown with shutter, they were not attacked. In the opinion of this Court, this fact does not prove anything.

(b-16) The witness has also been cross-examined on the previous statement which point has also been dealt with in Part-2 of this Judgement.

(b-17) Many facts like how many persons were there in the vehicle, how many policemen were there in the vehicle etc. have been asked to show that the witness is not able to answer all these, hence his version should not be believed.

In the humble opinion of this Court, the scenes on

the horrifying day, captured by the PW, where crime against the Muslims were committed cannot be compared with all such things.

The impression carried by one's mind of the day of the horrifying incident can never be forgotten whereas how many policemen were there in the vehicle or how many persons were there in the vehicle or who was standing beside the witness etc. are most immaterial information which the witness may not remember nor on that unsecured day it can be of any importance for the PW.

(b-18) The witness did not feel to contact lawyer or to contact police for the incidents he has witnessed, but merely that does not bring any discredit to the witness.

(b-19) It has been elicited that the witness has not told to the organizers of the camp to not take complaint in the printed form, but the complaint should be written with all necessary details. The witness himself explains that it was not possible for him to tell such things to organizers of the camp who were already knowing the law. No witness is expected to be expert on law hence, no distrust is brought to the PW in the Court.

(b-20) In paragraph 174, a word 'Door' has been shown as omission, but it cannot be said to be omission at all when the witness did state before the SIT about the wall of the mosque instead of door of the mosque, virtually it makes no difference.

(b-21) At paragraph 181, the omission before SIT has been shown which is with reference to paragraph 28 wherein the

witness has stated about the fact that at Shah-E-Alam camp, persons who were looking like police came with printed form and that we were called upon and that there was queue.

In the opinion of this Court, this part of version is not very important part of version, it is not incriminating in nature and that it is not connecting any accused with the crime, hence whether the said words were told to SIT or not makes no difference at all. In the same manner, at paragraph 182, 183, 185 what has been shown as omission does not seem to be material omission at all which is with reference to paragraph 29, 30, 31.

(c) OPINION :

(c-1) Through this witness the incident of the victims having been killed and then thrown in the dry well has been put up on record.

If paragraph 105 of the testimony is perused, it becomes clear that the witness has no personal knowledge about the fact but then it is merely his hearsay evidence. That being so, this allegation virtually becomes 'No evidence'. Hence this part of the testimony is not found in consideration zone.

(c-2) The fact stands proved that at the time of incident, in Gangotri Society, in all the houses, people did not come to reside and that in the vacant bungalows, it is probable for the victims to take shelter on the terraces.

(c-3) It stands proved that the mob which was near Jawan

Nagar was present at about 05:00 p.m. wherein A-20 and A-41 were present.

(c-4) In the mob after 12:30 p.m., Bhavani, Dalpat and A-25 were present who have tempted the people to go inside the godown. This mob was seen by the witness.

(c-5) In the mob which was coming from Krishna Nagar the people had weapons, the witness saw Guddu and A-1.

(c-6) In the morning, the mob which came with weapons from Natraj, the leaders were A-20 and A-41 who were having revolvers.

(c-7) The witness has stated that the mob seen by him at 05:00 p.m. has burnt the house of one Majid.

(c-8) The prosecution has examined Abdul Majid (PW 156). In paragraph 100, the witness has stated that he does not know full name of Majid Langda, in paragraph 101, he states that he was residing in the last lane of Jawahar Nagar. At paragraph 102, the witness has admitted that he may commit mistake in mentioning the name of the chawl. At paragraph 17, the witness has stated that Majid was residing in last lane of Hussain Nagar.

(c-9) PW 156, who is the only Abdul Majid examined, has stated that he resided at Jawan Nagar. This PW 156 has also stated that his family had died in the occurrence of water tank. There is no complaint on record filed by anyone to focus the fact that in one house, 6 to 7 persons were burnt alive.

(c-10) PW 156 states that his family members were not burnt alive at his house in this manner. It, therefore, seems that the incident of the torching of the house of Majid, residing at Jawan Nagar, alongwith 6 to 7 family members inside does not seem to have been proved as even PW-156 does not support the occurrence.

(c-11) There may be any other Majid residing at Jawan Nagar as common name is too common in Muslim community, but, may is not must. Secondly many incidents have not been revealed though in fact, they seem to have happened, thirdly, no complaint having such contents is on record (many of the victims have migrated the place and even the State even without lodging any complaint or without insisting that the wrong doers must be caught) are all the circumstances in which it is not advisable to label the witness as liar, however, remembering the principles of justice, benefit of doubt needs to be given to the four accused against whom the witness is alleging to have torched the house of Majid while the family members of Majid were inside. These accused are A-20 and A-41. It is to be clarified here that in any case, the presence of the accused at 5:00 p.m. on the day at the site, stands proved.

(c-12) In view of the fact that so many PWs have told that many Muslim dwelling houses were burnt wherein entire household, vehicles and other properties have reduced to ashes and when the panchnama of the site of the offence and even video shooting done by the investigating officer No.2, almost immediately after the occurrence, so clearly and visibly exhibit that numerous houses were burnt, there is no doubt that the

occurrence of burning the house deposed by the witness must have in fact occurred.

(c-13) This PW is truthful and this witness cannot be termed to be witness of falsehood.

(c-14) Even Exh.1082 which is brought on record by the defence in the cross-examination of PW 156, it is clear that even house of PW 156 was entirely burnt.

(c-15) The injury to Sarmuddin in firing was on account of police firing. (Paragraph 97)

(c-16) The defence of false involvement has not impressed the Court and in the fact, it does not seem to be right.

(c-17) The voluntary statement at paragraph 164 has nowhere been challenged according to which the mob of Hindus was very very huge as against that the Muslims were very very less, hence the efforts made by Muslims by stone-pelting to save Nurani have not left any effect.

(c-18) Incident of about 09:30 a.m. of burning the shops, stone-pelting on Nurani, stone-pelting on Muslims etc. stand proved by the witness.

The house of the witness was burnt and the fact that he has sustained damages, has also been proved.

(c-19) The witness has correctly identified A-25, A-41, A-1 and A-20. The fact that A-20 and A-41 had revolver (say

firearm) in their hand sounds to be credible which tallies with the deposition of PW 52 and other PW who talks about private firing.

Those who were not correctly identified viz. A-22, 38, 44 and 55 are given benefit of doubt as no TIP was held and no identify in the court.

(c-20) The witness was injured and had to take treatment at camp.

(c-21) Vide Exh.518, the printed complaint of this witness is on record which has also come up in the record and proceedings of C-Summary, is on record of this case vide Exh.1776/14.

(c-22) This PW, at paragraph 29, has specifically stated that since he was told even to give name of the accused, he has given names of some of the accused and which names were written and which were not written are not known to him. He has also added that he was desirous to give more names of the accused to the police, but he was stopped saying that 'give your detailed complaint later on as there is queue.'

(c-23) On perusal of Exh.1776/14 and more particularly internal page-21, which is the complaint of the witness, it becomes very clear that the witness has stated about presence and participation of A-1, A-25, A-41, Guddu, Dalpat and Bhavani in the riot even in the year 2002. It is very firmly establishing the clear presence and participation of the named accused who have even been named and identified by the

witness before the Court.

(c-24) If Exh.308 which is an F.I.R. is seen, it appears that the F.I.R. is based on a complaint of the witness dated 15/03/2002. If the printed complaint is seen, which is at Exh. 518, it is dated 05/03/2002 and no complaint dated 15/03/2002 is on record. Only the complaint at internal page-21 dated 12/05/2002 is on record which was given before P.S.I. Mr. D.S.Vaghela of the Crime Branch. The xerox of which has been placed in the record of C-Summary. This is one more illustration showing what kind of previous investigation was carried out by the Crime Branch. It is for this reason the interest of justice loudly demands to not solely rely upon the investigation carried out by the previous investigators. This kind of attitude of the investigating agency of pushing vital fact below the carpet needs to be deprecated and is deprecated by this Court.

(c-25) The witness is a man of advanced age who has given his oral evidence on the incident which took place before eight years, hence merely his inability at this old age to identify the accused should not be considered to discredit him, grant of benefit to unidentified accused is sufficient. It is rather natural.

This gets strength from the internal page-21 of Exh.1776/14 which should be kept in mind wherein except A-22, name of all the accused have been given by the witness in his detailed complaint in May-2002 which is on record. Considering which the PW is held to have been proving the prosecution case. The presence and participation of the identified accused viz. A-25, A-41, A-1, A-20, Guddu, Dalpat and

Bhavani, stands proved.

Whereas the witness gives names of A-22, A-55, A-38 before SIT in addition to other names, hence as per the discussion under the head of identity of the accused in the Chapter of T.I.P. at Part-2 of the Judgement, it is clear that this is the case of grant of benefit to A-22, A-38, A-44, A-10 and A-55.

(c-26) A-25 was seen by the witness in the noon where with the ill design, A-25 and others tempted the Muslims to hide inside the godown. This fact is supported by many other PWs and that looking to the over all facts and circumstances, there seems substance in the ill-design viz. criminality in the mind of A-25 and his companions, Jay Bhavani and Dalpat which was to burn the victims all together.

The PW is natural, truthful and credible. The presence and participation of A-1, 20, 25 41, Guddu, Bhawani and Dalpat is held to have been proved.

(d) FINDING OF PW-73 :

(d-1) In nutshell, benefit of doubt qua this PW is granted to A-44, A-22, A-55, A-38, A-10 as have only been named and not identified in the court.

(d-2) The witness proves beyond reasonable doubts, presence and participation of A-1, 20, 41 and Guddu in the morning occurrence, A-20 and A-41 were possessing firearm then.

(d-3) Incident of burning 6 to 7 family members in the house of Majid (PW 156) does not stand established.

(d-4) The presence and participation of A-25, Dalpat and Jay Bhavani stands proved beyond doubt in the noon occurrence.

(d-5) In the evening occurrence at 05:00 p.m., the presence and participation of A-20 and A-41 stands proved beyond doubt, who were also there in the morning incident with weapons.

(d-6) The PW has suffered damages in his house in the riots.

6. PW-83 :

(a) The gist of the examination-in-chief of this witness is as under.

"I reside at Naroda Paiya in Pandit-Ni-Chali since last 28 years and I do miscellaneous labour work, my husband had passed away before 13 years. I have three children.

On 28/02/2002, while I was at my home, the disturbances and scuffling was going on there, a was mob there, the mob was doing stone-pelting. I came out to see what is happening at about 09:30 a.m., I saw a mob pelting stones at Nurani and burning everything. In this mob, there were Guddu Chhara, Sehzad Chhara (A-26), Bhavani Chharo and Tiwari, I

saw all of them in the mob.

Seeing all these, I took my children and went to Hussain Nagar, I sat in one godown. When the mob also reached there, we left the godown and went to Jawan Nagar due to fear and then sat on terrace of one society, the men of the mob were coming upto there.

My house was burnt and damages have been caused to me as, things were scattered to pieces.

Guddu and Bhavani had died, Tiwari is plying an A.M.T.S. bus, I can identify Tiwari and Sehzad."

The witness had identified A-26 as a man she had seen in the mob on the date of the occurrence, A-25 was present in the Court, but was not identified.

(b) CROSS-EXAMINATION OF PW 83 :

(b-1) In the cross-examination, the attempt has been made to confront the witness on her knowledge about her neighbours, on her knowledge about the name of the partner of factory in which she was working, the name of the teacher of the school in which her children were studying, the name of the Muslim leader of the area, the name of the Corporator, Committee Members of the Nurani Masjid etc.

(b-2) In the humble opinion of this Court, whether she knows all such persons or not is not important, these persons are not comparable with the accused, who have ruined the

witness completely, the experience of the witness with the accused is a sad experience which is full of griefs and that it can never be easy for the witness to forget those accused who have participated and remained present in the horrifying crime. However, it can happen that when the witness is deposing on the occurrence after about 8 years, there may be lot of physical change in the accused and the appearance might have changed along with that, hence the witness may not be able to identify some of the accused. The Court also needs to keep in mind as to what other witnesses have stated about the accused while appreciating the evidence of a particular witness instead of readily labeling the PW as not worthy of any credit.

(b-3) The witness is a poor widow woman who was even widow in 2002, who must be trying very hard in these days of frequent rise in prices to see to it that her both the ends meet. She was not required to know the name of the partner of the factory where she was working because that partner had not done the act and omission which the accused have done. The role played by the accused in the crime in which this poor Muslim woman lost everything of her life cannot be forgotten by her which is a very natural conduct of any PW.

(b-4) The witness denies and states that it is not true that even for her personal work, she has not gone out of her area, the witness has here volunteered that in company of someone she had gone. This shows the PW if required was used to go out of her house and in any case, she was everyday going on her job. Hence, the possibility of her prior acquaintance with identified accused cannot be ruled out.

(b-5) At paragraph 10, the witness has specified that she is not an educated person and she knows what she is required to know.

(b-6) At paragraph 11, the witness denied it to be true that she was not knowing the name of the shop owner from whom she was purchasing the essential commodities. The witness volunteers the name of that shop owner.

(b-7) The witness has admitted that she had never gone to Bank or Post Office. The witness has volunteered that when she has to think of basic bread, how can she go to Bank, this reply comes from hard reality of life. In this country, poor people cannot afford to go to bank as they cannot have account in the bank because they do not have that much of money which can be deposited in the bank.

(b-8) Paragraph 14 shows that the witness has grievances against the previous investigator. Moreover, the explanation by the witness is that, such minute details did not struck to her mind which shows very natural conduct.

(b-9) At paragraph 17, the witness has volunteered that since Guddu Chhara and Bhavani Singh were frequently coming to her chawl, she has seen them many times. This shows prior acquaintance of the witness with both the accused.

(b-10) At paragraph 19, an attempt that the witness does not know Tiwari has been made. In fact, it is matter of fact that Tiwari resides adjoining to the Muslim chawls and seems to be in intimacy with Bhavani, Guddu etc. and that he was in fact

conductor in the AMTS bus. It is not necessary for every witness to know Tiwari only by traveling in the bus in which Tiwari is serving. No doubt, in absence of TIP not identifying A-25 by the PW secures benefit of doubt for him.

(b-11) At paragraph 20, prior acquaintance with A-26 has been challenged but the same is not accepted by the witness along with other suggestions. The prior acquaintance with A-26 can safely be inferred.

(b-12) At paragraph 20, the witness states that she has no personal knowledge about the death of Guddu and Bhavani, she has learnt it through someone else. It is not essential for the witness to have any personal knowledge on such facts, she can learn such facts from others like she has learnt that Tiwari, whom she refers, is running AMTS bus. These all itself means that she knows Guddu and Bhavani.

(b-13) At paragraph 21 and 22, the witness has admitted as was suggested to her, but then this does not mean that whatever is told by her in examination-in-chief is not true. The habit of the rustic witnesses is, to easily show agreement and to hardly disagree, as, the consequences are obviously not known to them.

(b-14) At paragraph 23, her knowledge that numerous Hindus are residing in surrounding chawls, shows her knowledge about the surrounding people. It is obvious that she being a Muslim woman, may not have any social relationship with the Hindu accused, but that fact merely cannot convey that she does not know them and they are strangers for her.

She does not know address of A-26, but then it is not important for her to know. Knowing does not include knowing address also.

(c) OPINION :

(c-1) In the opinion of this Court, the witness is a rustic witness, she is a widow and a labourer, having no exposure to the sophisticated world to which L.A. for the defence belonged. The witness is very simple and it is natural that she cannot understand the labyrinth of the words or the idea behind twisting any words.

(c-2) This Court has no hesitation to place on record that facial expression of each of the witnesses were speaking about their simplicity, their having not understood the twist in the language, their having understood that what has been once stated to SIT, has been understood by all, hence need not to be repeated in the Court, their expression were even speaking that they want to complete their deposition in the quickest possible manner.

(c-3) The principle is that when the appreciation of evidence of the rustic, villagian kind, innocent, straight and simple people like the witnesses in this case, is to be done, it is to be remembered that they have not learnt the general shrewdness people have adopted in day-to-day life. otherwise, the injustice is likely to cause or such an attitude may result into miscarriage of justice.

(d) RE-EXAMINATION OF PW-83 :

(d-1) This part is the most important part in the deposition of the witness. In case of many of the witnesses, the re-examination was not taken. In the re-examination, the reply of the witness clarifies that the witnesses, with poor understanding and less communication skill, may not be able to convey properly.

(d-2) In re-examination and as was clear on record, only one statement of the witness of the year 2002 was recorded, this witness has admitted the fact that in her only statement, she has stated before the police that, “Those who have attacked our chawl were the men who were in the mob and they were Guddu Chharo, Sehzad Chharo, Bhavani Chharo and Tiwari Bhaiyo who runs the Municipality bus, whom, I have identified.

(d-3) This re-examination is a glaring illustration which reveals that the witness who has stated in the tune of her chief-examination can be misguided or diverted to what an extent. This witness in her only statement that too her first and the last statement, after three months from the incident has stated, the role of all the four accused and the identity of A-25 and the words revealing that she knew all of them.

(d-4) Here the witness not only states presence of the accused, but even participation of the accused. If upto three months of the incident, the statement of the witness is not recorded by the investigating agency, what can be done by the witness, no fault can be found out with the witness.

(e) CROSS-EXAMINATION ON RE-EXAMINATION OF PW-83 :

(e-1) At paragraph 28 and 29, the witness has stated that when she came out at about 09:00 or 09:30 a.m., there were about 10000 persons near Nurani Masjid. The witness has very specifically stated in paragraph 29 that all the four accused were in front of the witness and she has identified them because of that reason.

(e-2) This is illuminating reply which proves the proximity or the close distance at which the accused were standing, the opportunity of observation to the witness and thirdly and mainly that unless the prior acquaintance is there, the witness cannot say with all confidence about such a thing and then cannot identifies them in the court hence, prior acquaintance can safely be inferred in case of A-26, Guddu and Bhawani.

(e-3) From this illustration, it is very clear that if the rustic witnesses are asked in a misguiding manner, the replies are bound to be misguiding and based on misperception of the fact by the witnesses. In this illustration, if the re-examination would not have been taken, nothing could have been clarified on the record, but in cases of some of the witnesses, re-examination has been avoided, mostly to avoid lengthy and taxing cross-examination of the witness against the re-examination. No doubt is left out in the mind of the Court that the witness know A-26, Guddu and Bhavani very well and she consistently right from the year 2002 states to have seen them participating in the crime. This is also tallying with other

witnesses for the same incident.

(f) FINDING OF PW-83 :

(f-1) This PW proves the presence and participation of A-26, Guddu and Bhavani in the morning occurrence at 09:30 a.m. at Nurani Masjid beyond reasonable doubt.

(f-2) The PW also proves damages to her house.

(f-3) A-25 is granted benefit of doubt qua the PW.

7. PW-94 :

(a) The gist of the examination-in-chief of the witness is that, he resided at Jawan Nagar for about last 20 years including the year 2002 along with his family, his wife was working. He saw the mob at about 9:00 or 9:30 while he was returning from his job through his mother's house wherein Hindu mobs were pelting stones at Nurani Masjid. Upon this, being afraid, he went to Gangotri along with his family, from the terrace he saw smoke and fire, he saw Jay Bhavani and Tiwari in the mob which was torching and were beating and killing.

The witness identifies A-25 correctly.

(b) CROSS-EXAMINATION OF PW-94 :

(b-1) This witness has replied at paragraph 18 that his relationship with A-25 and Jay Bhavani was on account of the

fact that they were residing there itself (the witness is residing at Jawan Nagar for last 20 years and he states about his prior acquaintance with the accused viz. A-25 and Jay Bhavani). In the opinion of this Court, this shows that A-25 and Jay Bhavani were residing in the Jawan Nagar area itself.

(b-2) At paragraph 19, the PW admitted that the houses in Jawan Nagar were with roof. This suggestion of the defence goes with the fact that even police has referred it in every material as 'Hutment of Jawan Nagar'. This probabalizes the fact that the PW who went to adjoining Gangotri Society and who were at terrace can surely see at Jawan Nagar, being on height.

(b-3) The suggestion is accepted that where Jawan Nagar is ended, on one side, SRP Coat is there and on one side Coat of Gangotri Society is there. (This is the present situation. It is not clarified as the situation of the year 2002.)

(b-4) The topic on contradiction of statement of the year 2002 has been dealt with at Part-2.

(b-5) Paragraph 24 and 25 clarifies that the Muslims of the chawls had to run away from their houses because of the attack by Hindus. The witness went to Gangotri Society and sat on terrace.

It is natural that the PW might not know the name of the owner of the house where they took refuge, hence, this cross does not bring discredit to the PW.

(b-6) Paragraphs 30 and 31 clarify that the PW saw a very huge mob at about 06:00 p.m. or 06:30 p.m. coming from the way of Uday Gas Agency, the mob was in the Maidan of Jawan Nagar when the PW saw it. This supports the fact that the mobs came through this route also.

(b-7) This witness has replied at paragraph 32 that A-25 and Jay Bhavani were not seen killing or cutting in the mob, he has simply seen the accused present in the mob. While reading it with paragraph 9, it stands extremely clear that Bhavani and Tiwari (A-25) were in the mob which was torching and killing. The PW, through the testimony, has only created doubt on involvement of A-25 and Bhavani from cutting and killing and not from torching and beating and not to be present in such mob.

Considering the above voluntary statement of the witness read with paragraph 9, it seems that in fact this witness proves the presence and participation of Bhavani and A-25 in the mob of miscreants in the morning occurrence with the charge of torching and beating.

(c) OPINION :

(c-1) Through this witness, it stand proved that A-25 and deceased Bhavani are residing in or at Jawan Nagar itself. Practically speaking, Jawan Nagar's last lane is the area where in fact, today also there is house of Bhavani whereas the house of A-25, Tiwari was in adjoining society named Gangotri, A-25, as has come up on record was residing in Muslim Chawls before.

(c-2) This witness proves the probability of prior acquaintance of the persons who resides in Muslim chawls with A-25 and Bhavani.

(c-3) The witness seems to be credible and quite natural and proves the prosecution case beyond reasonable doubt.

(d) FINDING OF PW-94 :

(d-1) Through this witness, the presence and participation of deceased Bhavani, Tiwari (A-25) in the morning occurrence at Nurani Masjid, stands proved beyond doubt.

(d-2) The PW proves damages at his house.

8. PW-105 :

(a) The gist of the examination-in-chief of this witness is as under :

(a-1) "I am a resident of Naroda Patiya since about 40 years, residing in Imam-Bibi-Ni-Chawl (opposite Nurani Masjid), one mob came from Natraj Hotel which halted near S.T. Workshop, this mob has caused arson of cart, cabins, shops etc. of Muslims near Nurani Masjid, stone-pelting was on going, bullet firing started in which Mustaq, my nephew and another boy Abid were hurt. The mobs with the weapons were unduly entering in our Muslim chawls. From S.T. Workshop, stones and burning rags were thrown in our chawl. Near Gangotri Society, there is a big Maidan where so many people

assembled and many people were cut and killed.

My house was burnt which I saw from terrace, smoke was coming out, I went to see my house before sitting in the bus for camp, my house was reduced to ashes, everything was burnt, robbed and it was not possible to enter in the house. There were certain persons of Naroda Patiya area in the mobs. Those persons were introduced to me by my friend Kadari, they are Manoj (A-41), Suresh Langado (A-22), Bipin Auto (A-44), Guddu, Bhavani, Tiwari (A-25). I have lodged a complaint at Exh.678, Guddu Chhara and Bhavani had died. Remaining accused, I may not be able to identify as I have trouble of my eye sight because of cataract."

The witness has identified A-2 by naming Bipin Autowala (A-44), Exh.678 is the complaint of the witness, the FIR of the witness is at Exh.2363.

The complaint of the witness is Exh.678 which was on record as I-C.R.No.177/02 wherein in the year 2002, he has named A-41, to have been involved in looting and torching. Thus, right from the year 2002, he has named A-41, Manoj Videowala, but he has not identified A-41. A-44, A-22 and A-25 were also not identified by the PW in the Court.

(b) CROSS-EXAMINATION OF PW-105 & OPINION ON IT :

(b-1) The PW is complainant eyewitness of the morning and noon occurrence.

(b-2) The witness has admitted that the witness was not knowing the accused, but the identity of the accused was given to him by Mr. Kadarbhai Kadari. This grants benefit to all the accused as it is doubtful that the PW knows even Guddu and Bhavani also or not.

(b-3) In the humble opinion of this Court, this fact shows possibility of mistaken reference of all the accused by their name, when even TIP has not been held.

Guddu, Bhavani, A-22, 25, 41 and 44 are entitled to benefit of doubt.

(b-4) The participation of the mob has been stated by the witness himself which was causing arson of cart, shops, cabins, shops etc. in addition to doing stone-pelting having weapons, attempting to unduly enter into Muslim chawls and lastly cutting and killing the people and moreover, causing damages to the Muslim houses and reduced the Muslim houses to ashes.

(b-5) At the end of the paragraph 29, it is admitted by PW that the mob was such a large and huge mob that passing of any vehicle was not possible. This is taken as argument with submission that the car of A37 can never come hence, the PW may not be believed.

This Court is of the opinion that when any vehicle of VIP comes, all such admissions are not applicable because in that case the way is always made out.

(b-6) The witness is not sure about whether the bullet

firing in which Abid and Mustaq were hurt was police firing or not.

However, it is clear that he is an eyewitness of the injury sustained by Abid and Mustaq.

(b-7) Through voluntary statement at paragraph 32, the witness has confirmed his personal knowledge about the injury to his nephew, Mustaq and another boy, Abid. This also proves the prosecution case.

(b-8) At paragraph 37, the part of the statement of the SIT is put up where it seems to have been stated that he was present when the bullet injury was sustained by his nephew and the same was by police firing on Muslims. This makes no difference since this witness is not a witness of private firing, he is a witness of the occurrences on that day. If paragraph 37 is seen, it is almost gist of the examination-in-chief and which tallies with his examination-in-chief, hence it appears that the witness speaks and is consistent with the statement of SIT.

(b-9) Moreover, in the statement before the SIT, the witness has named all the accused as is clear from the cross-examination, hence the examination-in-chief tallies with the statement of the SIT. No doubt inability of the PW to identify the accused does creates doubt of chance of mistaken reference hence, benefit to the accused.

(b-10) Paragraph 41 clarifies that the witness was there at the SRP at least upto 04:00 p.m. and then after at about 04:00 p.m., he came to the terrace of the Gangotri. He has admitted that at that time, he has not seen any occurrence and he could

reach at the terrace. This admission does not destroy prosecution case as even according to the prosecution case, the occurrence of the water tank where about 58 persons died, was the occurrence after 06:00 p.m.

(b-11) The witness has been crossed even on topography which has already been discussed in Part-2 of the judgement and those replies cannot be used to form any opinion.

However, by and large the witness is correct in the topography also. There is nothing to be doubted about, because every person would speak as per his perception.

The witness has admitted that at about 4 o'clock, he has not seen any occurrence of killing and cutting people, but then, as discussed, those occurrences are of about 06:00 p.m. and prior to that the occurrences are of burning the houses in Badarsingh-Ni-Chali and other Muslim chawls opposite Nurani Masjid and the incident of the Water Tank took place at about or after 06:00 p.m., hence this part of the cross does not help the defence in any manner.

(b-12) At paragraph 45, the statement of the year 2002 has been referred which is held to be unreliable by this Court as discussed in Part-2, hence it is not relevant.

(b-13) Exh.678 complaint is on record which is also on record with the record of C-Summary at Exh.1776/10 at Sr.No.76 wherein though right in the year 2002 name of Manoj Videowala was given by the PW, but, it is not relevant in absence of TIP and / or identity by the PW in the Court.

(b-14) At paragraph 52, the contents of the complaint, Exh.678 is verified.

While appreciating such verification, the Court cannot forget the fact that some of the contents of the complaint in the year 2002 might not have remembered by the witness and the witness may not be able to verbatim agree or disagree on the contents of the document of the year 2002. It is not a memory test of the witness.

(b-15) At paragraph 53, the witness has specified that at every place he has given name of all the accused (as given today in the chief-examination) but, at some places those names were written, while at some places, those names were not written.

This shows the way in which the grievances of the victims were dealt with.

(b-16) At paragraph 59, the witness has admitted that he has given the names of the same accused in the statement before SIT which names he has given in his complaint application. (in the year 2002)

In fact, this shows that the witness was knowing the names in the year 2002, which names he has mentioned during his testimony but identity becomes doubtful.

(b-17) At paragraph 61, as well as at paragraph 64, most immaterial contradictions have been asked which in fact

appears to have been asked in temptation to show more number of contradictions and thereby putting up a case of improbability.

In the opinion of this Court, paragraph 37 makes it amply clear that the witness has stated before the Court what he has stated before the SIT and that the direction from which the mob has come and what has been asked at paragraph 64, the word 'bus of the police' and the word 'vehicle of the police' are such contradictions which indeed do not make any difference even remotely in the spirit and in the meaning which the witness wanted to communicate.

On the contrary in the opinion of this Court, this is suggestive of the witness being very natural, not tutored and not a crammer. At paragraph 65, it becomes very clear that all the facts about the damages in the house, have been clearly stated before the SIT by the witness as well as the said fact were also stated in the year 2002.

(b-18) This PW is one more illustration that in the year 2002, the entire band of the previous investigator was to highlight the damages caused to the victim and to see to it that every victim is shown to have been conveyed that they did not know anyone from the mob. But the witnesses who speaks about the damages, would also speak about the incident, and it is not possible that every victim does not know anyone or every victim would be too frightened to involve the accused by name in his statement or complaint. Therefore, as has already been discussed, the previous investigation is not inspiring the confidence of the Court.

(b-19) At paragraph 67, it has been confirmed that the witness is not able to see clearly and that he is under the treatment for his eye sight.

This makes it clear why the witness is unable to identify the accused to whom he has named before two years in the statement of the SIT but, that is not significant in absence of TIP.

(b-20) At paragraph 68, it is suggested by the defence that there were Muslim shops, carts and cabins around Nurani Masjid and that there are about 12 Muslim lanes near Nurani Masjid which have Muslim inhabitation. This shows that why the site of the offence was chosen as Nurani Masjid and the Muslim chawls, which itself is self-speaking.

(b-21) Paragraph 69 is full of different suggestions which are projected to be causes for which the series of occurrences have taken place.

In the opinion of this Court, commission of crime by someone can never be a justification of commission of crime by the accused.

In this case, it is crystal clear that the accused have made attempts to be self-styled judges and they have tried to give justice for the cause of Kar Sevaks and the injustice caused to the victims of Godhra Carnage, but that can never be a justification.

(c) FINDING OF PW-105 :

(c-1) A-22, 25, 41, 44, Guddu and Bhavani are entitled to benefit of doubt qua this PW.

(c-2) Firing took place in morning occurrence wherein, Muslims were injured.

(c-3) This PW is an eyewitness of morning occurrence and noon occurrence at the Muslim chawls including torching the dwelling houses.

(c-4) At the dwelling house of the PW he suffered damages.

9. PW-106 :

(a) The gist of the examination in chief of the PW is as under :

"I am resident of Imambibi-ni Chali, Patia.

In the morning, I went to the public water tap, learnt that mob of Hindus have assembled near Nurani and are arsoning and burning lorry-gallas etc.

We stood near the present police chowky.

Police was with Hindu mob, police was firing on Muslims and was cruel on Muslims. Police was bursting teargas, three persons were hurt in firing at about 9:00 or 9:30

a.m. In firing, Aabid died on the spot, Khalid and Peeru have survived.

The persons of the mob were shouting "cut and kill", the persons of the mob wore white vests and khakhi half pent with saffron bandage on their foreheads.

The persons of the mob had swords, hockeys, pipes etc. The police was leading the mob and police was forcing us to go away, burning and arsoning was going on.

At about 2:00 to 3:00 p.m. we went to the maidan of Jawan Nagar, then to SRP Quarters.

Then we went to Gopi Gangotri Society from SRP where, we were not given any shelter.

At about 6:00 p.m., burning rags, stones and some inflammable material was thrown on Muslims from S.T. Workshop.

Then we sat near the house of Jay Bhavani, one policeman tempted us to take us in the vehicle with safety, we believed him and followed him, there we saw two big mobs of Hindus, we were surrounded by both the mobs at *Khancha* of Gangotri Gopinath Society.

The shouting of "kill and cut" was going on, my mother was pulled by Hindu mob who was burnt alive there itself. Even my elder daughter Farhana was also pulled from me by the mob whose clothes were removed, who was raped by

4-5 persons from the mob.

My younger daughter Reshma was beaten on her both hands who sustained fracture.

Petrol was thrown on my back and on my hand and even I was also burnt by the mob.

The persons from the mob have even raped a girl named Zareena by pulling her.

Police jeep came, police abused us and took us to Civil Hospital at about 9:00 or 9:30 p.m.

In the mob, Jay Bhavani, Shehzad, Tiwari and Manu were there. I know them. I and my daughter Reshma were treated at Civil Hospital.

My daughter Farhana was also raped and killed.

My mother Mumtaz, daughter Farhana, my sister-in-law Gosiabanu, nephew Akram and maternal aunt Rabiyabanu were killed and burnt alive by the mob in front of us.

My households and house were burnt.

Jay Bhavani had passed away. I know Manu, Tiwari and Shehzad."

The PW has identified A-25, A-26 and A-28 correctly.

(b) CROSS EXAMINATION OF PW-106 :

(b-1) At para 25 the witness has revealed that the occurrence of her mother had happened in front of her after 6:00 pm at *khancha* of Gangotri Gopinath Society.

She has admitted that she does not know who has pulled her mother. She has however stated that her mother was burnt alive by pouring petrol on her in front of the witness.

In the opinion of this Court the admission of the witness is confined only to the identity of the person / the accused who has pulled the deceased mother of the witness, but that cannot mean that the witness was even not knowing Bhavani, A-25, 26 and 28. This tallies with the contention at para 26 wherein, the witness has specifically stated that she knows the four named accused from among the members of that mob.

(b-2) Para 27 is to the effect that it was dark when the occurrence of the mother took place but at that time the faces were visible. This shows possibility of seeing the faces which needs to be read with the fact that on account of fire, there was sufficient light at the site also.

(b-3) The attempt highlighted at para 28 where part of SIT statement has been reproduced has been made to submit that the witness was not knowing as to who was in that mob.

In the humble opinion of this Court, while reading the voluntary statement in this very paragraph along with the

note of the Court which itself clarifies that the voluntary statement is full of truth. At para 116 the witness is clear and can be believed as eye-witnesses as stated, even in the year 2002. Thus, the involvement of the named four accused, is proved beyond reasonable doubt in the case of homicidal death of Mumtazbanu i.e. mother of the witness.

(b-4) It is also notable that para 50 along with the note clarifies that even in the year 2002 the witness did state that her mother was burnt alive by pouring petrol and kerosene and there is mention of identity and presence of Bhavani and A-25 in the occurrence which is also getting support from para 51. This shows consistence qua the mentioned PW and in any case, the statement of the year 2002 is not reliable.

(b-5) Para 29 reveals that the witness was knowing all the four accused by their face and voice as well, which shows clear prior acquaintance of the four accused.

(b-6) Para 30 suggested by the defence also focuses the presence of all the four accused in the mob which had killed the mother of the witness. The only defence is that she was not killed by any weapon by the four but, the fact remains that she was killed at the site on that day in riot.

(b-7) Para 32 is related to making the deceased daughter of the witness viz. Farhana naked at the site of the offence whereas, para 33 is for the rape on one Zarina.

In the opinion of this Court in the statement of the SIT the witness has stated that while daughter Farhana was

pulled by the Hindu mob, A-28 was also involved in that and that she knows A-28 quite well.

In the SIT the witness has not stated as to who has committed rape on her daughter. Moreover, at para 118, it becomes clear that the fact of the rape on deceased daughter Farhana was not told by the witness in the SIT. To decide credibility of the PW on the aspect, paragraph No.116 needs to be read.

(b-8) If para 116 is read along with para 43 to 50 it is clear that the witness says right from the year 2002 about outraging modesty of her daughter Farhana, rape on the said deceased Farhana and even murder of deceased Farhana. This shows that this witness is not speaking lie as suggested by the defence on the allegation of rape having been committed on deceased daughter Farhana. She is not required to repeat the said tale again before SIT when it is already in the previous statement. Pausing here, be it noted that name of the rapist has not been mentioned in this statement.

In the opinion of this Court, no mother would speak lie about the rape of her deceased daughter just to falsely involve someone. But, merely that does not mean that the witness should even be believed on the aspect of name given by her - that of rapists. The witness must be speaking truth and rape on her deceased daughter Farhana must have been committed as this Court has no hesitation to infer such occurrence to have indeed taken place, but then, in the fact situation it is doubtful whether the four named accused have committed rape on deceased daughter Farhana or not.

Considering which, and more particularly in light of para 118 the four accused needs to be granted benefit of doubt from the charge of having committed gang rape on deceased daughter Farhana. The presence of the four accused at the site of the offence stands proved. Even the homicidal death of the deceased Farhana also stands proved at the date, time and site of the offence. In the homicidal death of deceased Farhana the four named accused are held to have been involved as were present and have participated in the crime.

(b-9) In light of the deposition at paragraph 33, it is clear that the occurrence of Zarina did take place, but, who were those accused who have raped Zarina, has not been proved through the deposition of this witness.

(b-10) From paragraph 44, it is clear that the witness has proved the presence and participation of the four named accused even on the attack and resultant injuries sustained by the PW and the commission of the crime to the said effect.

(b-11) From paragraph 51, it becomes clear that the presence and participation of the four named accused in case of injury to daughter Reshma also stands proved.

(b-12) Paragraph 53 shows prior acquaintance of the PW with Bhavani, paragraph 54 and 55 shows the same for A-28, paragraph 57 and 58 shows prior acquaintance of A-26 and paragraph 61 shows prior acquaintance with A-25.

(b-13) Paragraph 72 proves the killing and burning of sister-in-law Ghosiyabanu, nephew Akram and maternal aunt

Rabiyabanu by the same mob wherein presence and participation of the four named accused stands proved.

(b-14) At paragraph 84, the explanation of having stated whatever was remembered, seems to be very much genuine and acceptable when the credible cause is found in the voluntary statement at paragraph 85 about the reason of tremendous fear in the heart and mind of the witness.

(b-15) All the questions related to the statement before the previous investigator need no discussion.

(b-16) Paragraphs 100 to 113 and paragraphs 123 to 126 are related to the SIT application which have been dealt with at Part-2 of the Judgement, hence need not be repeated.

(b-17) Paragraph 117 is to the effect that the witness has not heard or seen her deceased family members hence, apart from circumstantial evidence, this evidence helps the Court to draw the presumption of the death of the deceased relatives of the PW.

(c) OPINION :

(c-1) This witness has lost her numerous family members, who is a close relative of many deceased relative, who herself is also injured, whose deposition should be believed as it inspires the confidence of the Court. Since the other relatives deceased were also admittedly done to death in the evening occurrence where the accused were present and have participated in the crime, their involvement stands proved even

in committing deaths of the victims of crime.

(d) FINDING OF PW-106 :

(d-1) Presence and participation of deceased Bhavani, A-25, A-26 and A-28 stands proved beyond all reasonable doubt in the mob which caused homicidal deaths by killing and / or burning alive in the evening of the following deceased on the date of the occurrence, at the site of water tank (evening occurrence).

(1) Death of mother, Mumtazbanu
(burial receipt Exh.2358)
(2) Death of maternal aunt, Rabiyabibi,
(burial receipt Exh.2357)
(3) Death of daughter, Farhana,
(4) Death of sister-in-law, Ghosiyabanu
(5) Death of nephew, Akram,

(d-2) The presence and participation on the same date and site of the four named accused stands proved in causing injuries to (In the evening) :

(1) Daughter, Reshma
(2) The witness, herself.

(d-3) The occurrences of rape of deceased daughter of PW, Farhana stands proved and in the same way, rape of injured Zarina (PW-205) also stands proved, but the benefit of doubt is granted qua the involvement of the four named accused in these two crimes. Both the occurrences of rape of

Farhana and gang-rape on Zarina are held to have taken place as per the prosecution case.

10. PW-107 :

(a) The gist of the examination-in-chief of this witness is as under :

"I was residing at Hussain Nagar before 9 years, at 10:00 or 10:30 a.m., slogan shouting of cut and kill, cut the bandiyas, kill the bandiyas started, the mob was doing stone-pelting, the mob was of about 10 to 15 thousand persons, we went to SRP with family, in the mob there were Bipin Autowala (A-44) with revolver, Dalpat with sword, Bhavani with pipe, P.M.Shah and Gohel Jamadar were giving diesel and kerosene to the members of the mob. Dalpat and Bhavani had passed away. There are damages at my house. I know all the accused."

(b) CROSS-EXAMINATION & OPINION OF PW-107 :

(b-1) The witness has not identified A-57 and at paragraph 27 of the cross-examination he has admitted that 'the person to whom the witness knows as P.M. Shah is not present in the Court.' (A-57 is P.M.Shah who was throughout present in the Court).

A-44 has been correctly identified, Gohel Jamadar is not accused before the Court and the name itself is of a stranger, Bhavani and Guddu had passed away.

(b-2) It is an admitted position that this witness is also

witness of damages, but neither he himself nor any of his family members had sustained any injury in the occurrence.

(b-3) This witness has specified that he has taken shelter in one school number - 10 and that it was admitted that this fact was not stated in the statement before SIT or in the statement of year 2002.

In the opinion of this Court, it is most immaterial information, hence the question does not arise of drawing any adverse inference against the witness.

(b-4) If paragraph 19 of the cross-examination is read, then it becomes very clear that what kind of the witnesses have deposed in the instant case, the witnesses, as is apparent are, not understanding the cross-examination at many occasions and at times, they were answering in affirmative two different contradictory suggestions like ..... at paragraph 19, it was asked that the mobs were coming from all the four sides, in the second breath, it has been asked that the PW cannot say from which side the mob was coming. The witness has given affirmative replies for both the questions. This is suggestive that the witnesses have very little or poor understanding.

(b-5) Exh.699 is taken in the cross-examination as the complaint and loss-damage analysis form.

These kind of complaints have been dealt with in Part-2 of the Judgement as it is forming the common questions asked to many of the witnesses.

(b-6) Omission from the statement of the year 2002 is not material as has already been discussed at part-2 of this Judgement.

(b-7) If paragraph 30 is read, it is becoming very clear that the name of A-44, the name of Bhavani and Dalpat have been even given by the PW in the statement of the year 2002.

(b-8) The application of the SIT has also been a subject of cross-examination which has been dealt with.

(b-9) Paragraph 34 clarifies that the hair-cutting shop of the witness remains closed now. This shows loss of livelihood to the witness which should be kept in mind by the Court.

(b-10) This witness has also admitted that on the date of the occurrence, the Muslim mob has attacked on Hindus to save the Masjid.

(b-11) In the opinion of this Court, this is more or less admitted position and it does not in any way help the defence because it cannot be held that whatever the Hindu mob has done, has done in the self-defence because if the proportion of the criminal force is seen to have been used by both the sides then, that comparison of act and omission committed by both the sides are noted to be extremely clear that the defence of self-defence does not sustain for a fraction of second. On one hand, not a single death of Hindu is proved to have been committed by the Muslim mobs on that day and on the other hand, the death toll goes upto about 96 Muslims in the riot. Over and above, several Muslims have been injured too.

(b-12) If paragraph 39 is seen, prior acquaintance of A-44 with the witness becomes an admitted position.

In light of it, the involvement, presence and participation of A-44 stands proved beyond all reasonable doubt.

(b-13) Even this witness has been asked the common question that, because the Islamic Relief Committee has given new house, the witness is compelled to falsely involve the accused, which defence has not at all been justified and not at all been seems to be penetrable one, hence remains defence for the sake of raising defence. The PW is credible and natural.

(c) FINDING OF PW-107 :

(c-1) A-57 is not identified by the PW hence he is granted benefit of doubt.

(c-2) Through this witness, the presence and participation of A-44, deceased Bhavani and Dalpat in the morning occurrence stand proved beyond all reasonable doubt in the charged offences.

11. PW-108 :

(a) The gist of the examination-in-chief of the witness is as under :

" In the year 2002 I was residing at Pandit-Ni-Chali

beside ST Workshop with my family. Since my wife called me on phone, I returned from my job, I saw severe stone pelting and too many mobs on the way at Patia. I saw A-41 and A-44 in the mob, I saw the stone pelting between the two communities, I went to my home then, I went to Hussain Nagar with my family (stepping on the backside from the place the witness was residing), the mobs were marching ahead and ahead towards the Muslim Chawls and we were going in the backward direction, there was stone pelting at ST Workshop, we were hiding at the house of Ghadiyali at Jawan Nagar upto 5:00 p.m. Then, since the mob came and started pelting stones there also, we went to terrace of Gangotri, my parents were lost, mother was burnt by sprinkling chemical on her hands and father was injured because of stone hitting on the head, who both were injured in the occurrence and were treated at Camp.

There is too much loss in the occurrence in my family. The damage of the different households is of 2 lac rupees "

Correctly identified A-41 and A-44.

(b) CROSS EXAMINATION OF PW-108 :

(b-1) Initiation of the disturbance was at about 9:30 a.m. as per para 11, mobs were at Naroda Patiya and SRP Quarters as per para 13, daughter and parents were lost, daughter was found, parents were found later on.

(b-2) Because of increase in the stone pelting at Hussain Nagar, ultimately went to Jawan Nagar (behind the Muslim

Chawls).

(b-3) From Jawan Nagar went to Gangotri.

(b-4) In Gangotri Society Hindus are residing - this is what the prosecution case is.

It is admitted that the residents of this society did not injure the witness and others at that time, but at para 17 just below this para it is clarified that at that point of time the mobs did not came to Gangotri.

(b-5) At para 18 the witness has admitted that in the morning so many mobs were there, in the evening the mobs were less.

Even the prosecution case is that, in the evening the mobs were less but totally concentrated on the water tank occurrence.

(b-6) The witness has admitted that he has individually not given his complaint, but then that point itself is showing that the previous investigators have never bothered to secure the complaints for the ghastly occurrence.

(b-7) At para 24 the witness says that he has seen the first mob at ST Workshop in the area. This shows that Muslim Chawls were targeted and the attacks were preplanned.

(b-8) The suggestions at para 25 are not based on true facts but are based on distorted facts.

(b-9) The statement of the year 2002 is the subject matter of para 27, but it is not important.

(b-10) The witness admits that he has not seen firing while returning. Since the time of return of the witness is not ascertained, it would not be proper to draw any inference from that.

No firing is seen while going to the factory. According to witness, the witness has gone to his factory at about 8.30 a.m. and it is not the prosecution case that any firing was done at 8.30 a.m., hence the question has no base. The prosecution case is to the effect that the firing and initiation of the occurrences was after arrival of A-37 and not before that.

(b-11) At para 30 and 31, it is testified that the attack was from the mob where, A-41 and A-44 were there, but then, it is indeed not material since all the mobs were quite close to each other, hence what is important is whether the accused were in the mob or not. It is clear here that A-41 and A-44 were in the mobs which were violent and were pelting stones. This reveals sufficient involvement.

(b-12) Para 32 is to the effect that A-44 and A-41 were seen by the witness in the morning mob and then after the witness has not seen them since the witness himself was occupied in hiding himself. This rather shows that the PW is natural and truthful.

(b-13) Para 33 and 34 makes it clear that the witness does

not know A-57 which has even told by him in the SIT hence the witness is consistent in his say which results into grant of benefit of doubt to A-57.

(b-14) If para 33 and 45 are read together then the witness has seen Bhavani in the mob near his house. Nothing incriminating about him

(b-15) At para 35 the witness has admitted that at about 9:45 a.m. there were reciprocal stone throwing between Hindus and Muslims. This is the fact accepted by many of the witnesses, but as all of them have specified, it is to save Nurani. This point does not score any brownie for the defence.

(b-16) The witness admits that no injury was caused to any one of them, at about 11:00 to 11:15 a.m. from the residence of Pandit-ni Chali the witness went to Hussain Nagar, from 3:00 to 3:00 or 4:00 p.m. the witness then went to Jawan Nagar from Hussain Nagar and then at 5:00 p.m. went to SRP Coat, all of which was on account of the attack made at different places and all such transferring the places was to save oneself from the attack.

(b-17) It is revealed that Gangotri society has continuous row houses, Jawan Nagar no Khaado is also known as Bhatta where previously the brisk were prepared. At para 44 the witness admits that at 5:00 p.m. he has not seen any occurrence at Jawan Nagar.

This is but obvious as according to almost all witness the wall of the Jawan Nagar was broken at about 4:00 p.m.

(b-18) Para 46 and 47 makes prior acquaintance with A-41 clear which rules out false involvement, no T.I. Parade was hold for any accused, but then it was not required also.

(b-19) At the relief camp there were about 8 to 10 thousand persons as is clear from para 50.

This clearly shows the rush and real position of relief camp which makes it easy to perceive that there cannot be any situation or ambiance for the detailed interrogation or investigation by the previous investigator.

(b-20) At para 54 the common question of SIT as to " every statement is OK " has been highlighted.

(b-21) Para 63 is a contradiction for a limited purpose as to know where A-41 and A-44 were seen and in which mob. It is clear that the defence is not suggesting that they were not seen at all. If para 63 is seen then even in the year 2002, the names of A-44, A-41 and Bhavani have been mentioned by the witness.

(b-22) At para 64 the witness admits that because of the occurrence he could not specify the exact timing.

(b-23) A-41 was seen at Patiya Circle and A-44 was seen at Krishna Nagar at his shop. The witness admits that the mobs were different, the witness is asked about topography which all are not found to be relevant.

(b-24) At para 69 the witness has stated that he resides at

Naroda Patia right from his birth. This is sufficient to infer prior acquaintance with the named accused.

Para 85 shows prior acquaintance with A-44 because of which the T.I. Parade is not must.

(b-25) The witness admits that at para 73 he has not told about physical description and identification mark of any of the named accused. The PW explains that no officer has asked the said question.

(b-26) Para 76 makes it clear that there was statement with reference to I-Parade also.

(b-27) The witness is mainly the witness of damages and putting up the fact of his parents were injured and treated at camp and daughter was lost in the incident.

(c) FINDING OF PW-108 :

(c-1) This is a witness of incidents of damages at his house, in morning and noon upto 5:00 p.m.

(c-2) This prosecution witness proves acts and omissions complained of to have been committed by A-41 and 44 in the morning occurrence.

(c-3) Through this witness it is proved that A-57 deserves to be granted benefit of doubt.

(c-4) The parents of the PW were injured and were

treated at camp.

12. PW-109 :

(a) The gist of examination-in-chief of the witness is as under :

"I am a resident of Hussain Nagar, I came on the road, at about 09:00 a.m. I saw the mob of 15000 to 20000 persons, the persons of the mob were burning, killing and torching fire, I returned home, then went to Gangotri Society with my family, I went at the terrace, everything was burning all around, screaming was heard all around.

In the mob I saw Mungado (A-39), Shehzad (A-26), Manoj (A-41), Suresh A-22, and Jay Bhavani with weapons, Jay Bhavani had passed away."

The witness has identified A-39, A-41, A-22 and A-26 correctly, Jay Bhavani is dead.

(b) CROSS-EXAMINATION OF PW-109 :

(b-1) It has been revealed in the cross-examination that the garage of the witness was on the footpath, it was of rickshaw repairs, garage was in the open space, the witness used to keep his tray of instruments at garage only, the tray was kept at the shop of the wholesaler from which he was purchasing rickshaw garage material.

From the replies in the cross and more particularly

paragraph 10, the revelation of the witness seems to be full of truth, it has not impressed the Court that the witness was using the footpath space illegally and was not paying any Governmental tax etc. as it is too common and nothing to be surprised about, hence, it does not come in the way of belief that the witness is the witness of truth.

(b-2) All questions on topography need no consideration as have already been considered in Part-2 of this Judgement, moreover, the witness has not stated in his chief-examination as to except from the main road, he has seen the mobs from any other place. Hence, it is important that from the place viz. the road, from which the witness has seen the mobs, is the place from which it is probable to see the mobs or not. The reply of the Court is 'it is probable'.

Further, at paragraph 16, it is volunteered by the witness that the garage was at the distance of 3 minutes from the S.T. Workshop, therefore, also it is probable.

(b-3) At paragraph 20, the prior acquaintance of one of the accused has come up on record.

(b-4) At paragraph 21 and 22, the witness has admittedly seen mobs of the Kuber Nagar as well as of the Krishna Nagar side and that both the mobs were doing stone-pelting on Nurani as well as the persons standing there viz. the Muslims.

(b-5) At paragraph 23, the witness has admitted to have taken halt of five minutes, which time is sufficient time for any witness to observe the accused and their activities, hence the

identification sounds satisfying.

The witness has not stated as to in whose hand, which weapon was there, hence the later part of paragraph 23, does not yield any fruit for the defence. Observation power of every PW cannot be the same.

(b-6) At paragraph 24, lack of police staff has been admitted, which cannot be termed to be subject of the witness, however, it may be true or it may not be true, is not important as the trial is not against the police.

(b-7) Paragraph 26 reveals that the mob was near Nurani Masjid, this tallies with the examination-in-chief.

(b-8) Paragraph 27 clarifies that the mob of the Krishna Nagar which was extended upto SRP Quarters came and merged in the mob of Nurani, even this is tallying with the chief.

(b-9) Paragraph 30 is to the effect that a truck was taken inside the Nurani, this is in fact tallying with the prosecution case of somebody to have dashed the truck with the wall of Nurani which obviously could have been done by some Hindu only and that is also supporting the prosecution case.

(b-10) Paragraph 33 shows that the witness is unaware about the fact as to which Muslims were standing around him, this is quite natural, it may happen. This does not come in the way of credibility of the PW.

When it is an admitted position that there were about 10 to 15 thousand persons at the site, it is not possible for everyone to notice every another person, one can only notice the persons who is in the vicinity. Again it depends on observation power.

(b-11) Paragraph 35 reveals that the named accused were leaders of the mobs hence, it is clear that they would obviously be visible.

(b-12) Paragraph 36 is to the effect that the witness has no rent receipt or rent note or entry in the Panchayat Office about his rental house at Hussain Nagar, but that is indeed not important. Speaking practically, one may not procure all such evidences in usual cases.

(b-13) At paragraph 37, the witness has replied that he does not know as who was the owner of a bungalow of Gangotri which was his hiding place on that day. This sounds extremely natural because one hides at the place where one finds it safe which is normally the house without inhabitants or the house where nobody may stop the entry.

(b-14) The questions from the statement of 2002, has no significance and importance as has already been discussed in Part-2 of this Judgement.

(b-15) At paragraph 42, the witness admits that he has not seen either on the way to terrace of Gangotri or from terrace of Gangotri any occurrences. This is also quite probable and natural. There is no straight jacket formula of behaviour of

every witness, hence this reply does not mean that the PW is not of truth.

(b-16) Paragraph 44 and 58 respectively proves prior acquaintance of the witness with A-22 and A-44 respectively which is the prosecution case.

(b-16.1) Paragraph 46 is suggesting by the defence itself the prior acquaintance with A-26 wherein the suggestion itself is clear to the effect that A-26 resides in the same locality.

(b-16.2) Barring one or two exception, the witnesses are knowing the place of the business and the residences of the accused which as the record speaks is in the same locality where the site of the offence is situated.

(b-16.3) Paragraph 48 shows prior acquaintance with one more accused.

(b-16.4) Paragraph 50 shows that the deceased Jay Bhavani was admittedly residing extremely close by to the site of the offence.

In the opinion of this Court, when this is the position where the prosecution is required to establish prior acquaintance of each witness with each of the accused one by one.

(b-17) Paragraph 52 and 54 show that the previous investigators have written the address of the witness at Jawan Nagar though the witness was residing at Hussain Nagar. This is very much probable when all the panchnamas are seen

wherein mainly the 'roof of Jawan Nagar', can be seen to have been commonly written.

(c) FINDING OF PW-109 :

(c-1) Through this witness, the prosecution has proved the presence and participation of deceased Jay Bhavani, A-22, A-26, A-39 and A-41 beyond all reasonable doubt in the morning occurrence.

13. PW-112 :

(a) The gist of the examination in chief of the witness is as under :

"I am a resident of Hukamsingh Chali, I was operating my own flour mill, my husband ran a shop, at about 9:30, a cousin came to flour mill to inform that big mobs have come from Natraj Hotel to Nurani, hence I came on road, saw people with khakhi half and vest and having saffron belts on their foreheads, they were reciting “Jay Shree Ram”, attacking, arsoning, torching Nurani Masjid and had weapons like swords, hockeys and diesel, petrol, etc. were also brought by them.

The Pesh Imam (one who directs to offer Namaz) was injured, surrounding shops were burnt and robbed.

Then I returned home after seeing all these, told the incident to the family members who all came out, many Muslims were seeing the incident, my husband was beaten by

police on his both hands when he was seeing the incident hence, his hands were fractured. At this time the mobs of Hindus were attacking Muslims and the Hindu mobs were doing stone pelting, the Hindu mobs came to our Muslim chawls, but still police was inactive and was telling us “why are you coming out of the house ? go inside”, police was firing and bursting teargas, Hindus were not told anything by the police meaning therebym no actions were taken. Till this time I was standing opposite my own Flour Mill.

At about 11:00 or 11:30 one Aabidali died in police firing there itself. Thenafter Mustaq, Peeru, Khalid were also injured in firing, I was present at the time of all these firing, after the three were injured in firing, the Hindu mobs unduly entered in our Muslim Chawls, all the frightened Muslims came inside my house and with the view to save lives of all of them, I took all of them to Hussain Nagar at the house of my brother-in-law Akhtar Hussain where we stayed for an hour.

Thenafter from S.T. also, stone pelting started, hence we all Muslims, along with the family of my brother in law Akhtar Hussain headed towards Jawan Nagar (which comes on the backside of Hussain Nagar). Then after since we have heard that one Muslim named Rana Kadir had been cut and burnt we went to Gangotri Society (comes immediately after Jawan Nagar).

At this time the driver of AMTS Jay Bhavani met and had asked "Appa, what has happened" hence I informed that, "our children are crying, we are hungry since morning, our household has been robed and burnt". At this time Jay Bhavani

told that, "wait I will arrange for your meals". Thenafter, after going slightly ahead he fingered us to a Hindu mob which was standing near Khada. In this Hindu mob I saw Bhavani, Guddu who had swords, Shehzad Chhara (A-26) who had hockey, and Suresh (A-22) who had Scythe, all of whom, I had seen.

Bhavani was provoking and shouting, "kill Miyas". The house of a Hindu woman was at a place where we were standing, we took shelter in her house, we were there for an hour, she gave Rotis to our crying children. Since she was informed by someone that her house also would be burnt since she has sheltered us, she told us to go from her house.

We came out of her house, there we met Tiwari (A-25) who was conductor in the AMTS, we told the policemen present over there to provide us safe shelter who showed *khaada* (pit fall) as a safe place for us and asked us to sit there. We went there..

I saw that in the pit fall which is maidan, that there was mob with petrol, diesel and swords. At this time all those who were separated from us were not permitted by the policemen to return, hence they had hidden at the *khancha* of the water tank near Gangotri and Gopinath.

I returned towards Gangotri, the SRP policemen sitting over there, did not allow to go inside on the ground that Godhra people have done a horrifying crime, we were beaten by rifle, stick etc. teargas was also bursted on us, we ultimately came to terrace of Gangotri at about 7:00 or 7:30 p.m.

At this time shouting, crying, call to save, etc. were heard from all around and from the Water Tank. I saw that the Muslims who departed from us and were hiding there were cut by swords, scythes and then burnt by pouring petrol and diesel. The crying children praying for water were compelled to drink diesel and petrol. After sometime the cries and screaming increased like anything. The young daughters were molested and were brought in naked position. After sometime, we saw the killing of Muslims in front of us, these Muslims were the same who had departed from us, persons from the Hindu mobs were rejoicing by singing songs, whistling, etc. perceiving that every Muslim had died, they were shouting in joy "all Muslim had died", which I heard.

The persons of the mob were bringing gas cylinders from Uday Gas Agency, houses were burnt with those cylinders, households were robbed and such robbing etc. continued and promiscuous behaviour of the mob also continued.

At late night we were taken to camp, on the way we saw many dead bodies burning, we saw in the moonlight ourselves crossing many dead bodies, our houses were burning. I have heard that my sister Kudratbibi was cut and burnt even by throwing away her ornaments and money. I have sustained loss of Rs.10 lacs.

I had head injury in the stone pelting for which I was treated at camp, my husband has sustained fracture in his both hands for which he was treated at camp, my two shops and flour mill were burnt.

8 members of my sister Kudratbibi's family had died, I am illiterate, I stayed at camp for 7 months, my application was given to SIT which is at Exh.718."

The witness has correctly identified Suresh (A-22) Shehzad (A-26) and Tiwari (A-25). Guddu and Bhavani had died.

(b) CROSS - EXAMINATION OF PW-112 :

(b-1) From para 36, it is clear that the witness has no personal knowledge about the occurrence of Kudratbibi and her family member.

From para 38, the state of the mind of the witness gets revealed wherein the PW admits that she has no threat from the accused. But as she volunteers, she is afraid of her own.

In the opinion of this Court, it is not necessary for the witness that the threat of the accused can only create fear in their mind. In fact it is voluntary process which is tremendous grip and deep impact of the occurrences witnessed by them. In such a state of mind it cannot be expected that such a witness would cooperate and assist the criminal justice delivery system, unless the witness is cured by the grief counselor or say treated psychologically to remove the fear.

(b-2) If para 40, 41, 42 are read with para 63, it is clear that according to the witness at about 11.00 a.m. on the date of the occurrence Abid, Mustaq, Peeru, Khalid were injured in

police firing near S.T. Workshop and that, at that point of time there was disturbances ongoing.

(b-3) The witness has made complaint against the previous investigators, which reveals their the then conduct which is at para 41, 70 and at other parts.

(b-4) Para 42 is related to what has not been stated during the previous investigation, but since the said has been dealt with at Part-2 of the judgment no comments need to be made here.

(b-5) Para 44 clarifies that the witness and others were at the terrace of Gangotri. Para 45 is an admission that at this time there was a large mob which came from Canal side. The witness has volunteered that it is in this mob she has identified Guddu, Bhavani, A-22, 25 and 26. This witness has even volunteered that the mobs were coming from all the sides wherein one mob had come from the way of Uday Gas Agency from the open ground near Jawan Nagar and another came from Canal. Here again the witness volunteers the fact that as far as the occurrence of Gopinath and Gangotri Society are concerned (has a reference of Water Tank occurrence), the mobs came from all the sides and it had cordoned. All these undoubtedly proves the prosecution case even during the cross-examination.

If para 44, 45 and 52 are read together, then it is too clear that all those accused who have been named by the witness were present, seen by the witness and were participating in the crime at the water tank occurrence.

(b-6) At para 46, the witness was suggested and she admits that at about 6:00 p.m. on that day, when she reached near SRP Group - II, the Muslim chawls were torched. This proves the prosecution case.

(b-7) Para 49 shows tremendous fear in the minds of Muslim at that time, who even could not talk with another Muslim on the terrace and remained hidden on the terrace until the police came to take them in the relief camp. This shows the state of mind of Muslims on account of the ghastly attack, which tallies with the observation made at Part-2 of the judgment.

(b-8) Para 50 is to the effect that though the witness had head injury on account of stone pelting, she has not told anyone about the injury on the terrace of Gangotri.

In the opinion of this Court, this is quite natural conduct of any person who is trying to save life and that in other words when the existence, i.e. to say the life, is in danger, no body would look at injury in one part of the body.

(b-9) Para 52 clarifies that the witness is not sure as to in which mob she has seen Guddu, Suresh, Bhavani, Shehzad and Tiwari from among the mobs which came from all around. However, the witness is extremely sure to have seen these accused.

Moreover, through this para the fact of prior acquaintance of A-22 with this witness stands very clearly

revealed. The witness has seen A-22 at the site of the water tank where people were burnt alive. She has seen all the named accused at the site of the water tank which very firmly proves the prosecution case and clear presence and participation of Guddu, Bhavani, A-22, 25 and 26 in the occurrence of water tank at evening.

(b-10) Para 53 proves sufficiency of the light at the site. This point has been elaborately discussed at Part - 2 of the judgment, being a common point raised with almost all PWs. It cannot go out of mind that at the site, even fire was there which admittedly created enough light to see and observe any accused.

The rustic witness can only say that the witness has seen the accused but in all cases, rustic witness cannot even give reason why the witness could see the accused, but when the fact is clearly admitted on the record, and when there is no serious dispute about the occurrence, the light which can come because of fire, also cannot be disputed.

(b-11) At para 53, the witness has stated that she has seen the accused from the terrace, but the said terrace was closer to the water tank, she has seen Guddu and A-22 with weapons.

(b-12) Insistence on the statement of the year 2002 cannot be a valid defence when according to this Court it is unreliable record of previous investigation. Still however, the fact remains that para 55 shows that all the facts stated in examination in chief were conveyed to the previous investigator by the witness.

(b-13) Prior acquaintance of A-26 comes from the suggestion given by the witness and in any case the record states that he was resident of the same area.

(b-14) The PW is noticed to be truthful and credible.

(b-15) At para 66, the witness has stated that from the way of Uday Gas Agency the gas cylinders were brought to their chawls.

As yet to be discussed, the prosecution has produced a documentary evidence on record which shows that about 25 gas cylinders were stolen on the day of the occurrence and as many witnesses have stated their houses, Nurani and chawls were damaged by gas cylinder blasts.

(b-16) As is clear at para 68 learned Advocate for defence has stated that presence of the accused is not disputed, there presence with the weapons is disputed. This also supports the case of presence of the accused.

(b-17) The witness seems to have stated right in the year 2002 itself that she has seen Guddu and Suresh Langda (A-22) in the violent mob of miscreants. But she does not remember which weapons they were holding. This helps the prosecution case.

(b-18) Para 71 is related to most immaterial omission which naturally cannot have any effect on the prosecution case.

(b-19) Para 73 firmly clarifies that the witness has prior acquaintance with all the accused hence the significance of T.I. Parade does not remain.

(b-20) Para 75 is related to the uniform mechanical sentence in the statement of the SIT which this Court has discussed at Part - 2 of the judgment.

This witness seems to have stated that the earlier statement is not true reproduction and the right statement was given by her at that time.

(b-21) Para 78 is not related to an important or material omission as, what the witness has stated in the SIT statement has the similar spirit.

It is not material as to in which light they went to police vehicle. It is also not important that how the witness was inclined to apply to the SIT. With what has been stated by the witness the prosecution case is not contradicted and the spirit of communication indeed does not change, hence it is not material.

(b-22) Para 79 guides the court as to how certain omissions have remained in the statements. The witness has stated that she has not informed to the SIT as SIT did not asked it. The mentality of the witness is unless asked nothing is to be said. Moreover, passage of time would solace and pacify the people hence, the zest would obviously be reduced and the words may not remain similar.

(b-23) If para 82 onwards are read, it is becoming clear that for these rustic witnesses they understand ground, khada, farm, well as one and the same, the reason is that, on the southern side of Jawan Nagar, there is one big ground which is known as Khaada of Jawan Nagar, which is also having slopes and pitfall at some part of it. The witnesses in general call it khaada or maidan. In the same way, on the eastern side of that ground where the ST Workshop wall is taking turn and where Gokul Society ends, there is a way to Canal and there is indeed a very big ground where there is one well. Hence, the witnesses are referring even that maidan as Kuva (well) or even maidan. This witness has very clearly put up the entire way how the witnesses refer the places. The eastern side of ground is referred as Khetar (farm), Kuvo (well) or Khado (it is a big ground), but since the place beside Jawan Nagar is known as Khaada even this maidan has been referred by the witnesses as Khaada. This perception of the witnesses needs to be kept in mind about the factual aspect.

(b-24) The contents at para 86 & 88 is a part of the SIT statement.

It is true that the Hindu mob has not attacked on the witness, but merely that cannot prove that the Hindu mob has not attacked on anyone, nor it proves that the Hindu mob was not present there at that time. Para 90 clarifies that she has seen the mob and at para 89 the witness has clarified that she was not attacked for the reason that she went inside the house.

(c) FINDING OF PW-112 :

(c-1) Through this witness the morning incidents near Nurani and evening incident of Water Tank stand proves beyond all reasonable doubt along with presence with deadly weapons and giving provoking and exciting slogans by the accused and participation of the accused viz. deceased Guddu, Bhavani, A-22, A-25 and A-26 in both the incidents.

(c-2) Through this witness the probability of commission of rape on Muslim women and outraging the modesty of Muslim women near the water tank shall be held to have proved, if the name of the victim and other details stands proved or else this allegation is found general and hollow.

(c-3) This witness is an injured witness and even her husband and even Pesh-e-Imam were also injured in the occurrence.

(c-4) According to this PW Aabid, Peeru, Khalid, Mustaq were injured in the police firing near S.T. Workshop in the morning occurrence.

(c-5) This witness supports the prosecution case of conspiracy among the accused to commit the crime as she says at para 6 that the mob came with the deadly weapons and with the arrangement of diesel, petrol etc.

This preparation shows preplanning of the accused.

14. PW-113 :

(a) The gist of the examination-in-chief of this witness is

as under :

"I am a resident of Gali No.2, Hussain Nagar, in the line of Madressa from birth, illiterate, my wife died in the riots.

At about 9:30 a.m. I went near S.T. Workshop, I saw a Hindu mob shouting “kill, cut”, the mob was rushing, the mob was attempted to stop by throwing stones, at that time, police did firing, hence 3 persons died who were Aabid, Peeru and Mohammad.

We were frightened when mob entered inside our chawls at about 12:00 noon, the persons of the mob were beating and burning everything, hence I went towards Jawan Nagar along with wife and children, the men of the mob had swords, pipes, pistol, etc., I saw Manoj (A-41) who was telling “kill Miyabhai”, the mob was marching towards the Chawl, we went to Jawan Nagar from where we tried to enter SRP Quarters, but were not allowed, hence went to Gangotri in the evening.

Certain Muslims were at the *Khancha* of Gangotri and Gopinath, hence we also went there, where there was sudden attack, people were killed by swords and burnt alive by sprinkling petrol and kerosene. I ran away, but my wife and children were burnt alive before my eyes. I have seen them burning.

I saw in this mob, Manu (A-28) with a pipe, Bhavani with sword and Guddu with whom I did not see weapon. Those who were being burnt were shouting "save, save" but nobody

was helping them even I was standing there, but when all were started to be burnt, I ran away from there. At this time, somebody hit my leg with a pipe, then I went to SRP.

In this occurrence of *Khancha* (*Khancha* is the same place where is water tank) my niece (daughter of sister) aged 21 years Noorjahan, father-in-law of my sister Aadamali, my wife Saliyabibi, my daughter Muskan aged 4 years, my son Subhan aged 3 months were burnt and they all had died on the spot of *Khancha*.

At the same place my another niece Shahjahan, my nephew Shahrukh (both children of my sister), my son Khwaja Hussain were also burnt, but the three could survive after the fatal injuries.

I went to SRP Quarters where it was dark, police came, took us to camp, at Shah-E-Alam camp my younger sister Shamim met me who told me about the fatal burn injuries of my son, even I was injured and was taking treatment at camp. My son Khwaja told about death of other family members in front of him, even niece and nephew at Civil told the same thing.

I went to identify the dead bodies, but could not do that because the dead bodies were in unidentifiable position. All my households were robbed and burnt.

My application to SIT is Exh.721. I saw Manu, Manoj Videowala, Bhavani and Guddu, but Bhavani and Guddu had died."

The PW correctly identified Manoj Videowala (A-41) and Manu (A-28).

(b) CROSS EXAMINATION OF PW-113 :

(b-1) The witness is confronted about his knowledge of his neighbours which the witness has replied with a specific statement that he leaves early in the morning and comes late at home.

(b-2) The witness has stated at para 27 that everyone was running here and there. The above two position show hard reality of the life and the fact situation which existed on that day.

(b-3) Confrontation on topography has been dealt with at Part-2 of the judgment.

(b-4) Para 29, 30 & 31 convey that the witness does not know from where the mob came while he was at his home and that from the internal ways in the Muslim chawls, there is possibility of to and fro.

(b-5) At para 32, it stand confirmed that while the witness went from Hussain Nagar to Jawan Nagar his son Khawja, Shahrukh and Shahjahan were with him. This shows that the witness has chance to witness the entire occurrence of *Khancha* of the evening. This probabalizes for the witness to be eyewitness of the occurrence of *Khancha* where several Muslims were killed and burnt alive.

(b-6) A very important point needs a note that helps to understand the topography of 2002. The witness has stated at para 32, 33 and 34 that at that time there was no Coat of SRP but there was fencing with thorns at the SRP Quarters and the same requires to be crossed to go inside the SRP, at this place, there is wall at some places and that the *Khancha* is between Gopinath and Gangotri Societies. (This is the site of water tank).

Para 34 also clarifies that near the water tank there is *Khancha* which was quite narrow and not very wide.

(b-7) Paragraphs 36 and 37 reveal that the attack at the water tank was immediately done where there were many families. Thenafter, from water tank the witness went to SRP Quarter whereas the three viz. Shahjahan, Shahrukh (children of his sister) and son Khawaja Hussain were at the water tank and the witness ran away leaving them by saving his life.

This shows that the witness is eyewitness of the occurrence.

(b-8) The witness met his son Khawaja Hussain thereafter at the camp, the police was visiting the camp, the cross is on the statement of the year 2002 which has been dealt with as is held to be unreliable.

(b-9) Para 46 to 48 are to the effect that the witness went to do the panchnama of his house where necessary writings were done, the statement of the witness was recorded at

Naroda Police Station.

(b-10) The witness identifies A-28 on the name of Manu Waghri. As far as name 'Manu' is concerned, the accused has been rightly identified.

(b-11) At para 51 the statement of the year 2002 is referred but, even in that statement the fact that between Gangotri and Gopinath societies there is *Khancha* of water tank where people were hidden, has been mentioned. Even this supports the prosecution case.

(b-12) The printed complaint application of the witness has been challenged by the defence, which, if is seen, the reference of A-28 and other persons who are Chharas and the workers of Bajrang Dal, resident of Gangotri Society, persons from ST Workshop etc. have been named for burning and killing of wife, daughter and son of the PW.

Defence is heavily relying upon the printed complaint at Exh.724 and Loss Damage Analysis Form at Exh.725 which aspect, being of common question, has been dealt with by this Court at Part-2. Suffice it to say here that, this is neither an earlier statement nor seems to be a statement of the witness wherein even name of his wife is wrongly written, which, instead of Saliyabibi, is written as Saleha. No PW would mention the wrong name of his wife hence, this application cannot be relied upon to falsify the witness. One more point needs to be added here that when, even after 8 years while describing the serial deaths in the family, the witnesses are crying immensely then what could be their plight

saying about the same serial deaths only after 6 days of the occurrence as this application is dated 6/3/2002.

At this place it is fitting to refer para 62 wherein the witness has stated that Manu Waghri and Manu Harijan is one and the same person. This firmly clarifies that the witness has not mistaken in identifying A-28. At para 64 the witness states that he was extremely disturbed at that point of time. Para 65 clarifies that there is mention of the name of Manu Harijan also in the statement of the witness before Second I.O.

(b-13) At para 55 and 56 the witness states that the application was not read over, the accused identified today were present there at the occurrence. This is clearly proving the presence of the accused.

(b-14) Para 65 and 66 clarify that Bhavani has been identified with physical description and involved properly by the witness in the offence.

(b-15) At para 68 the witness states that he has seen A-41 at the gate of ST Workshop between 9:00 to 10:00 a.m.

He saw Manu, Bhavani and Guddu at about 6:00 p.m. at the occurrence of Gangotri Society. Thus, in nutshell, the witness involves A-41 in the morning incident whereas A-28, Guddu and Bhavani have been involved in the occurrence of *Khancha*, / of the water tank / between Gangotri and Gopinath societies.

(b-16) Para 69 and 70 are to the effect that the witness

came out of his house and went to the Nukkad opposite Nurani Masjid, he saw a mob near ST Workshop.

He also heard the voice of cylinder bursting.

(b-17) He admits that against the stone pelting by the Hindus, counter stone pelting was done by some of the persons of their locality. He clarifies that it was to stop Hindus, that the Muslims threw stones, the police was only firing on Muslims (para 71).

(b-18) At para 72, 76, 88 etc. the grievances of this PW against the previous investigators can be read. Para 74 is to the effect that the mob entered in the Chawl at 12:00 in the noon. This proves the noon incident.

(b-19) As is revealed, upto 6:00 p.m., the witness was at Jawan Nagar, then after he went to the *Khancha* of water tank at Gangotri Society. If para 80 is perused, the occurrence of water tank is clearly described. This also shows that he is an eyewitness of the occurrence of water tank. At para 88 the witness states that the occurrence took place between 6:00 p.m. to 8:00 p.m.

(b-20) Para 90 to 93 etc. are related to the SIT application which was merely a formal application and is not significant which also is discussed at Part-2 of the judgment, being a common question in cross.

(b-21) If para 100, 101 and 106 are read it is clear that the witness was present in the morning occurrence at ST

Workshop.

This Court believes that though he might not have stated the time of 9:00 to 10:00 a.m., but the incident mentioned is of morning as can be seen from para 101 also, hence non-mention of specific time is not material when at para 106 the witness has stated in specific that on the date of the occurrence he left his house in the morning.

At 12:00 noon, the Muslim Chawls were attacked which proves the prosecution case.

(b-22) At para 102, the witness cried immensely and has disclosed that "only we know how we have saved our lives". Para 103 reveals that the witness was at Jawan Nagar Khada, it took one hour or so for him to reach there. This shows the position of the road then and the plight of the victims then which too, proves the prosecution case.

(b-23) At para 107 the witness is suggested that there was one hall named Jayveer Hall. This supports the deposition of PW 52 who talks about hall and killing of watchman and his family on the road in the morning occurrence. Para 108 also supports that the hall was visible from the road and that witness denies that it is not true that no occurrence near the hall took place, he adds that there were mobs at that time.

(b-24) At para 111 the witness again confirms that he is an eyewitness of *Khancha* occurrence of his wife and children and he has also witnessed that the other persons were also burnt there at *Khancha*.

(c) FINDING OF PW-113 :

(c-1) PW 113 proves the presence and participation of A-41 in the morning occurrence beyond reasonable doubts.

(c-2) A-28, Guddu and Bhavani in the occurrence of *Khancha* i.e. in evening occurrence, beyond reasonable doubts.

(c-3) Both the incidents have been proved by the PW along with presence and participation of the named accused in the respective occurrences.

(c-4) The witness is an eyewitness of the evening occurrence of water tank, of killing and burning alive his wife Saliyabibi, his daughter Muskan aged 4 years, his son Subhan aged 3 months, father-in-law of his sister viz. Adamali and his niece Noorjahan who all had died on the spot of Khancha.

15. PW-114 :

(a) The gist of the examination in chief of the PW is as under :

"I am a resident of Jawan Nagar, three children died in the incident and one daughter (Afsana) has been injured.

At about 9:00 or 9:30 a.m., mob started assembling near Nurani who had yellow belts with “Shree Ram” on the forehead, the mob was pelting stones, I returned to my home. We remained at home though surrounded from all the corners,

but at 6:00 p.m. left the home.

Near Gangotri, there is a gate of SRP, we went there, we had hidden ourselves near SRP Gate.

At about 7:00 p.m., when it was little dark, SRP people have beaten us and sent us to Gangotri near Water Tank when stone pelting from S.T. was also going on.

We went towards Tisra Kuva where we faced big mob who had newspaper in their hands and were telling us “look here what you did in Godhra”. Somebody was arsoning, somebody was cutting women and children with sword in the mob.

I and my family were departed, 3 children remained with me and 3 children were with my wife, there is Water Tank near the wall.

My daughter Rukhsana, Zareena and son Shamshad were cut here by the mob who were with me. I had hidden myself seeing this, my children were cut at 7:00 p.m. I remained hidden till about 9:00 p.m. There another mob came. I tried to save myself. There was killing and cutting all around, even gas cylinders were been blasted all around.

In killing my children, Bhavani, Guddu and Suresh were there, Bhavani had tin of kerosene, Guddu had a Trishul, Suresh had a sword.

Bhavani and Guddu had died.

I went to relief camp at about 1:00 a.m. where in the vehicle, my wife and two children met me.

Daughter Afsanabanu was separated who was found being treated and alive at Civil after 8 days.

Our house was robbed and burnt".

The PW correctly identified A-22.

(b) CROSS EXAMINATION OF PW-114 :

(b-1) Paragraph 17 to 27 are on topography which is not held to be relevant in light of what has been discussed at Part-2 of the Judgement.

(b-2) At paragraph 28, the witness makes a voluntary statement wherein, he involves Guddu, Bhavani and A-22 as the persons who were present and have participated in the crime with the weapons where the witness was also present at the site and wherein the children of the witness viz. daughter Rukhsanabanu, daughter Zarinabanu and son Shamsad were killed, for which occurrence, the witness was an eyewitness as at the said point of time, the witness was present at the site.

(b-3) At paragraph 29, as was suggested and as was admitted, the witness knows the three accused by name from previously, hence the cross on T.I. Parade has no relevance.

(b-4) At paragraph 31 to 35 and at paragraph 46 to 71,

the cross-examination is on the SIT application and on the printed applications which both being a part of common questions in cross-examination it is held to have been dealt with at Part-2 of this Judgement, hence the repetition is avoided.

(b-5) At paragraphs 36 to 45, oral statements before the NGO and Media have been attempted to be highlighted, but both of them, not being earlier statements or statements during the investigation, in the humble opinion of the Court, cannot be used to contradict the witness.

(b-6) At paragraph 88, the cross-examination is about affidavit of the PW to have been filed before Hon'ble Supreme Court, but then even this point has also been discussed and decided at Part-2 of the Judgement, being a common question for the cross-examination. It requires no repetition.

(b-7) As is clear at paragraph 72, the witness has stated before the SIT to have come out at about 10:00 a.m. or so which was due to the fact that the witness came to know that the mobs had come opposite Natraj Hotel and Nurani Masjid.

(b-8) At paragraph 73, it is reconfirmed that the witness does have personal knowledge about the occurrence of the morning since he came out of the house and saw the incident.

(b-9) Paragraph 74 is for the contradiction for what is not stated by the witness in his examination-in-chief before the Court.

(b-10) At paragraph 79, as is suggested, it stands proved that the witness is the witness of the evening occurrence at the water tank.

It is true that the witness has admitted that at 07:00 p.m., it was dark, but what the witness is forgetting and the Court should not forget is, the occurrence is the occurrence of torching human being alive with the aid of inflammable substance which would result into fire and light is bound to be result of the occurrence, hence, the admission of the darkness at that point of time, would indeed not help the defence.

(b-11) At paragraph 85, it is gets clear that the witness has not filed any complaint even though three of his children were cut and killed in the occurrence.

As per the note, the witness has however, stated in his statement that Guddu, Bhavani and Suresh (A-22) were the three who had burnt his children. Paragraph 86 also is to the effect that the witness confirms that the three accused were in the mob which killed his children.

(c) OPINION :

This proves the prosecution case of presence and participation of the three named accused in the crime.

(d) FINDING OF PW-114 :

(d-1) This witness has proved presence and participation of deceased Guddu, Bhavani and A-22 in killing and burning

the children of the PW viz. daughter Rukhsana, daughter Zarina and son Shamsad in the evening occurrence at water tank on the date of the occurrence.

This witness also proves the injury of daughter, Afsanabanu of the witness in the said incident.

(d-2) This witness proves that at about 5;00 p.m., most of the Muslim chawls were burnt and the violent Hindu mobs were killing Muslims hence the Muslim went to Gangotri to save themselves where they were cordoned by different Hindu mobs in the evening occurrence.

(d-3) Through this witness, the morning incident of Nurani stands proved and even damages of the house of the witness has also been proved.

16. PW-115 :

(a) The gist of the examination in chief of the PW is as under :

"I am a resident of Patia.

At about 9:30 or 10:00 a.m., I was informed by the wife about the mob to have arrived outside, which was shouting “kill and cut”, I went to S.T. Workshop on the road, saw Hindu mob near Noorani, the mob was destroying inside and outside the Masjid and were shouting “kill and cut”.

Bipin, Murli and Guddu were leaders, who were

instigating the mob and were telling to cut and kill. The mob was burning the shops on the road and entered in our chawl. I returned to my home, heard the noises of bullet firing, I sat at the residence of Jadi Khala upto 1:30 p.m.

Since the mob entered inside the chawls, I went to the house of one Pinjara with my family, which house was a two-storeyed building opposite my house, at late night the vehicle came, we went to camp.

Guddu Chhara had passed away.

My house was burnt by the mob".

This PW correctly identified A-2 (Murli) and A-44 (Bipin Auto).

(b) CROSS EXAMINATION OF PW-115 :

(b-1) The witness is confronted on the fact that one Ismail Chotubhai is his real brother. This is with reference to the question that this Ismail was an accused with reference to murder of one Ranjitsinh Nathusinh Chauhan on the date of occurrence which was conducted at the Sessions Court, Ahmedabad. The witness states that he was not with the said Ismail and one Habib at the Relief Camp and that the witness is not sharing good terms with their families.

In light of the above mentioned fact the cross examination on the aspect does not yield any fruit for the defence.

(b-2) At para 22, 23, 66 to 74, 77 and 78, the cross examination is on topography, relationship with his brother, Habib, facts on Ranjit case, about rash driving of TATA 407 case etc., which all is found to be absolutely irrelevant and immaterial in view of the fact noted at the point above.

(b-3) Para 28 to 34 is the cross examination on the printed complaint application which has been dealt with at Part - 2 of the judgment.

In Exh.749 of this printed application (also produced at Exh.1776/10, the record of C Summaries) the names of Guddu and A-44 has been mentioned which tallies with the examination in chief, but an important note is to be taken over here is at para 142, this witness has very fairly stated that he has not given name of Bhavani and A-26 but surprisingly even then, the said names are forming a part of the printed application.

(b-4) At para 42 the uniform mechanical sentence of the SIT of all other things is true and correct is highlighted but at Part-2 of the judgment even this point has already been discussed.

(b-5) It is true that the witness has admitted that he has not seen A-2, 44 and Guddu after 11:00 a.m. but, the prosecution case is also not put up through this witness for any other occurrence, hence this time is not material to falsify the PW.

(b-6) It is true that the witness has involved A-2 for the first time in the year 2008, but that is not an impressive point as this Court did not find any other investigation reliable except the SIT. Even the investigation of the SIT is also reliable except for the uniform mechanical sentence used in most of the statements. This might be with a view to make record protecting the colleagues predecessor I.O., the previous investigators.

(b-7) In light of the fact that the three accused belong to the same area, the question of not holding T.I. Parade does not hold the field. This is more so when at para 65 the witness has stated that he resides in the area since about last 30 years and normally he knows the people of his area. Even from this, the prior acquaintance can safely be inferred which, this Court has inferred.

(b-8) At para 89 it becomes clear that the suggestion of the defence itself if read with para 91 it is getting clear that the prior acquaintance of the witness with A-44 can safely be inferred.

(c) OPINION

Through this witness the presence and participation of A-2, A-44 and Guddu stands proved in the morning occurrence at Nurani where the accused were observed by the witness to have been instigating the mobs, saying cut, kill, burning the shops near the Nurani and unduly entering into Muslim Chawls.

(d) FINDING OF PW-115 :

The morning occurrence at Nurani before 11:00 a.m. of shouting slogans, burning shops, exciting the Hindu mobs etc. stands proved beyond all reasonable doubt with presence and participation of A-2, A-44 and Guddu in the occurrence.

17. PW-116 :

(a) The gist of the examination in chief of the PW is as under :

"In th eyear 2002, I was resident of Gali No.3, Hussain Nagar for 10 years.

At about 9:00 or 9:30 a.m., I came at the corner of S.T. Workshop, there was a big mob, persons of the mob were telling to close down, they were compelling to close down the shops near Masjid, the mob started stone pelting. I went home.

Out of fear of the mob, after locking my house, I went in the streets situated on the back side alongwith my children and hid ourselves there.

At about 12:00 or 12:30 noon, a mob came on the backside and started beating, robbing and burning. We still further went on the back side. The mob followed us. We were hiding ourselves.

We thus reached upto society at about 5:00 or 5:30 p.m., we went on terrace with family, saw a big mob coming

from highway from the terrace. There were so many persons in the mob with weapons like spears, swords, kerosene, pipes, sticks, etc.

I know 12 persons from this mob. Suresh Langda had a spear and Champak had a stick.

The persons of the mob were arsoning, killing, robbing and burning, so many persons were around, we were afraid and remained on the terrace. Ultimately at about 11:00 or 11:30 p.m., police took us to the camp.

Persons of the mob burnt my house and robbed my households.

After the incident my family went to Rajasthan and was not ready to come back because of the fear on account of the riot. Hence, I also went to Rajasthan and stayed there only.

Since 8 to 9 years have passed and there is change in the bodies of the accused, I am not able to identify them."

In the deposition the witness has referred names of A-4, A-5, A-6, A-7, A,-9, A-22, A-11 as persons present in the mob on that day but, did not identify any of the accused.

(b) CROSS EXAMINATION OF PW-116 :

(b-1) This witness has not identified A-4, 5, 6, 7, 9, 11 & 22, all the persons whom he has named. It is a matter of fact that this witness has migrated from the State of Gujarat and

has permanently settled at Rajasthan along with his family. As emerges from the record, he was required to do so since, on account of the tremendous impact and grip of the occurrence, his family was not at all ready to return to Gujarat. It is due to their insistence, the witness has to permanently shift to Rajasthan. It is with this background the witness, who is father of four daughters, has come all the way from Rajasthan to depose in the matter as an eye witness to the occurrence.

(b-2) From this witness, it emerges on the record that as a matter of fact, the violent mob unduly entered into their chawl at about 11:30 a.m. or so and that the miscreant members of the mob were cutting and killing people and burning everything there. The witness states that they then went to one terrace where he has hidden himself along with his family members.

(b-3) It is true that the witness has very clearly established the presence of all the accused at the site and he has further added that some of the accused were also holding deadly weapons. Since the witness could not identify any of the accused and since during the investigation no test identification parade was held, it is not safe to hold that the witness is indeed referring the seven named accused as the perception of the witness about the accused along with their names can tally when he identifies the accused either during the investigation or in the dock. But, none of the two has been done. It therefore appears just and proper to grant benefit of doubt to the accused named by the witness as far as his testimony is concerned.

(b-4) Before parting from the discussion on appreciation of evidence of the witness, this Court would like to place on record that there are fair chances that the witness, since is a father of four daughters and has since permanently shifted from the State of Gujarat, in fact, does not wish to identify the accused though in fact, he might be knowing the accused even today. The criminal law needs answer as “shall” and not “may”, and, it is this logic that grants of benefit of doubt to the named accused in the facts and circumstances of the case by noting that the witness has proved that Gopinath Society is of Hindus, the mob has unduly entered in the Muslim chawl at about 11:30 a.m. and from the malenous the Teesra Kuva beyond Gopinath Society has a way which reaches to Naroda village, which shows that Naroda village is close by from this place.

(C) FINDING OF PW-116 :

(c-1) A-4, 5, 6, 7, 9, 11 and 22 are held to be entitled to be granted benefit of reasonable doubt qua the testimony of PW-116.

(c-2) It stands proved that at about 11.30 a.m. onwards the violent mob with weapon unduly entered into the Muslim chawls cutting, killing and burning of people by the mob in the morning occurrence was ongoing.

(c-3) The morning and noon occurrences did take place on that day which were witnessed by the PW.

(c-4) There is way to go to Naroda village from the Maidan which is beyond Gopinath Society and where Teesra

Kuva is situated. Thus, Naroda village is close by from this place.

18. PW-117 :

(a) The gist of the examination in chief of the PW is as under :

"I am a resident of Jawan Nagar since last 5 years, incident occurred before about 8 years, I was at home.

At about 9:30 a.m., there were disturbances on the road near Noorani, there was a mob near Noorani of 10,000 to 15,000 people, I went to see, there was stone pelting, firing, robbery, out of fear I returned home.

Without locking the house, I went to SRP along with my family. As we are Mansuris, the female members of our family used to wear Sarees and put Kanku in the forehead, hence the mob treated us as Hindus, hence we were permitted to go away by the mob, I saw beating and robbing on the way.

Even our house was robbed and burnt, we went to Kathwada, then went to village Bahiyal, stayed there for 15 to 16 days, then came to camp.

Guddu and Jay Bhavani, who have died, were there in the mob.

In the mob, Ganpat was with an open sword and was beating men.

(b) CROSS EXAMINATION OF PW-117 :

(b-1) This witness has hardly gone to the first bench where the accused were sitting and without going any further he returned. He did not have confidence enough to be able to identify A-4. As it may be, but the fact remains that A-4 was not identified by the PW.

If para 13 is seen then the witness has very categorically stated that he knew Ganpat Chhara viz A-4 prior to the riot. This shows the prior acquaintance of the PW with A-4.

(b-2) The witness, as such, involves Guddu, Bhavani and Ganpat viz. A-4, he is a witness of the morning occurrence of the disturbances near Nurani at about 9:30 a.m. of the date wherein the witness has seen stone pelting, looting in the shops and even torching. He states that A-4 was noticed to be in the mob with open sword and was noticed by the witness to have been killing people. The house of the witness was looted and burnt.

(b-3) At para 15 the witness has admitted that he has not stated as to from which place A-4 was running away. According to note of the Court, A-4 has been mentioned in the statement of the witness to be the person residing in Gayatri Society (it should be Gangotri Society) with sword in his hand and with catching hold of the persons and killing them.

(b-4) At para 16 the witness has denied the suggestion

that he has not given the name of Ganpat (A-4) in his statement. In fact the suggested part of the statement at para 16, of 18/3/02 viz. right from the year 2002 itself, is having mention of the name of A-4.

(c) OPINION :

(c-1) In light of the above discussed points it is becoming clear as crystal that the witness has proved presence and participation of deceased Guddu and Bhavani in the morning occurrence beyond reasonable doubt but, the presence and participation of A-4 in the same occurrence becomes doubtful for want of identity of A-4 in the Court.

(c-2) Since A-4 has not been identified and when there was no TIP, he deserves benefit of doubt.

(d) FINDING OF PW-117 :

(d-1) Through this witness the prosecution proves beyond reasonable doubt the morning incident at Nurani at about 9.30 am on the date of the occurrence wherein the witness proves presence and participation of deceased Guddu and Bhavani in the crime beyond doubt.

(d-2) A-4 is granted benefit of doubt.

(d-3) The witness has sustained damages at his house which was also burnt.

19. PWs-135, 237, 245, 253, 270, 277, Etc.:

(a) Exh.888, Exh.1851 face identification mark of A-38, Exh.404, Exh.235, 236 with PW-34, Exh.1868 with PW-15 & 17 Exh.185, 186, 187.

(a-1) **PW-135** : PW 135 is the complainant of I-C.R.No. 238/02 registered at Naroda Police Station which involves A-38 in the homicidal death of her brother, Hasanali Momhamadali Mirza on the ground that on 28/02/2002 while the complainant was at her house situated at Hussain Nagar, Naroda Patiya alongwith her deceased brother, who both belonged to Khambhat, the violent mob of Hindus attacked their house, broke open the doors and have unduly entered in their house where both the brother and sister were trying to hide themselves, at about 10:00 a.m., the mob was pelting stones in the Muslim chawls, the men of the mob unduly entered in the house of the complainant and took out, by pulling away, the deceased brother of the complainant, the complainant resisted the attack, but the men of the mob have started beating the deceased brother, the complainant came to save her brother from the grip of the miscreants, but by that time, one of the miscreants started beating the brother of the complainant with stick and another miscreants has given sword blow on the throat of the deceased brother and has also given sword blow on the hands of the deceased, all this was witnessed by the complainant, the deceased brother was then tied on the cot and then the acid was poured on the deceased and having thrown the cotton mattress roll on the body of the said deceased brother, by pouring petrol, he was burnt alive by match stick.

(a-2) After this, the mob entered in the house of the

complainant and did looting and has burnt the house of the PW-135. While the occurrence, one of the miscreants who was participating in the crime, his mobile phone from his pocket fell on the ground which was taken away by the complainant. The occurrence took place somewhere in the morning in which the brother of the complainant died as was burnt alive. The complaint at Exh.880 has been filed which is on record wherein the detailed formalities then after adopted by the complainant are on record. The complaint has been exhibited through the witness.

(a-3) At Exh.1776/23, the record of the C-Summary brought from the Court of Metropolitan Magistrate is on record wherefrom the complaint of the complainant, the mobile phone call details, the order of the Police Commissioner to merge the complaint with I-C.R.No.100/02 are on record, vide Exh.317, the F.I.R. of the complaint has been lodged.

PW-135 has satisfactorily proved her complaint, the appreciation of her evidence is to be done hereinafter, hence a small mention has only been made with mention of all the relevant documents.

(a-4) **PW-237** : PW 237 is one Haidarali Nafasali Mirza, who belonged to Khambhat and is relative of PW 135, he was contacted by the said PW 135 and with reference to the telephonic talk, he came with one Mr.Moghal at the camp, he came to camp, he met PW 135.

During his deposition, this witness has supported the version of the complainant as he was told by PW 135. Thus,

this PW has supported the PW 135.

(a-5) **PW-245** : PW 245 is the person whose assistance was taken to deposit the mobile instrument collected from the site of the offence by PW 135. This person, in his deposition has, given an account as to how he has dealt with the mobile instrument handed over to him etc. According to him, the mobile instrument was handed over to him on 18/03/2002 which he has kept with him upto 12/04/2002 and that PW 237 had contacted him for this work. The testimony of this witness tallies with PW 237.

(a-6) **PW-270** : This PW 270 was the then Assignee Officer who was handed over the muddamal mobile instrument on 17/04/2002 by Joint Police Commissioner Shri M.K.Tondon in presence of PW 135. This witness was instructed to hand over the mobile instrument to Shri Rana, who acted accordingly.

While this witness has deposited the mobile phone instrument, the panchnama of recovery of mobile instrument was drawn at Exh.1868 by PW 277 to whom the mobile instrument was deposited. The testimonies of PW 270 and PW 277 tally with each other, which again tally with the testimony of PW 135, which all collectively prove the panchnama of Exh.1858, by which the mobile instrument, according to the prosecution case, of A-38 was collected by PW 277.

(a-7) **PW-17** and **PW-194** : These two PWs are the panch witnesses of the panchnama Exh.1868. This panchnama has been discussed at Part-4 of the Judgement under the chapter of

panchnama.

Moreover, in the totality of the facts and circumstances of case, this panchnama appears to be a credible piece of evidence, more particularly, in light of the deposition of PW 277.

Exh.185, 186 and 187 etc. have been discussed while discussing the panchnama and oral evidence of PW 17.

(a-8) Exh.888 : Exh.888 is the panchnama drawn during the investigation of the complaint wherein PW 15 was a panch witness. Even this panchnama has been discussed at Part-4 of the Judgement, suffice it to note here that Exh.888 is a panchnama which has been exhibited at the instance of defence. Through this panchnama, the damages of the complainant as well as recovery of ashes and control earth from the site of the offence is clear, this needs no discussion since it is exhibited at the instance of the defence. It has only been mentioned to highlight the formalities having been adopted by the concerned officer i.e. PW 277 in whose presence the panchnama was drawn.

An important fact needs a note that this panchnama has been drawn on 15/04/2002 for the offence committed on 28/02/2002. It is a matter of common experience as to what could have happened to the ashes, if any, at the site of the offence within such a long span of period. However, it is suggesting the procedure to have been adopted by the investigating agency.

(a-9) Exh.236 : Exh.236 is the identification panchnama drawn in the presence of the Executive Magistrate (PW 34) with reference to Yadi at Exh.235.

This panchnama has been discussed at length while discussing PW 34, panchnama and etc. in Part-2, under the Chapter of T. I. Parade, as has been held that PW 34 who was doing the official act is held to be proper and credible one and the panchnama drawn by him at Exh.236 is also held to be a reliable piece of evidence. It is already held that A-38 has been correctly identified by PW 135 on 03/10/2002 whose presence and participation stands proved through PW 135 and the complaint filed by her.

While dealing with the topic of T.I. Parade in this Judgement, the impact of identification mark on the face of A-38 has also been dealt with hence, need not be repeated. Suffice it to say that no reasonable doubt is created thereby.

(a-10) Exh.404 : Exh.404 is the P.M. Note wherein the endorsement of PW 285 has been made. Except the endorsement, the P.M. Note is of an unknown person. That being so, this Court, as has already discussed under the chapter of Postmortem, is not inclined to believe it as reliable piece of evidence so as to call it the genuine P.M. Note of the deceased, Asanali / Hasanali Mirza.

(a-11) **PW-253** : PW 253 is a hostile witness, a shop keeper who has been examined with reference to the mobile phone call details, which is of no much significance with reference to the facts and circumstances of the case.

(a-12) In light of the above discussed facts and in light of the testimony of PW 135, the gist of whose testimony is to be produced herein below, it is becoming extremely clear that the homicidal death of the deceased brother, Hasanali Mirza, the brother of PW 135 proves to have been caused on the date, time and place of the morning occurrence as after 28/02/2002, he has neither been heard, nor been seen by anyone for more than 7 years. This Court is therefore, inclined to infer the death of said Hasanali Mirza.

(a-13) A forceful submission cannot go out of the mind when the defence has submitted that, in light of the discrepancies among the testimonies of PW 135, 237 and 245, all of them should be held as not credible.

It is true that PW 237 is the one to whom PW 135 has handed over the mobile instrument and it is PW 237 who has handed over it to PW 245. There seems to be confusion in the testimonies of three PWs when PW 135 at para-24 and 25 states that the mobile instrument was deposited by PW 245 and after some days, she, PW 245 and PW 237 went together to the Police Commissioner for the identity of the mobile instrument. PW 245 at para-11 states that he and PW 237 went to deposit the mobile instrument and PW 237 states at para-12 that he, PW 135 and PW 245 went to the office of Police Commissioner to hand over the mobile instrument.

(b) FINDING ON THE POINT ABOVE :

(b-1) In the opinion of this Court, the first and foremost

point should not lose our sight that after all the witnesses are deposing as to what they have done with the mobile instrument in the year 2002 before about 8 years. During these 8 years, so many occurrences must have happened in their life and that it is not very natural that every minute details about the process they have adopted to hand over the mobile instrument would be imprinted in their mind and that they would be able to reproduce it with mathematical perfection. By passage of time, certain unimportant things get fade in our mind and when one is required to state about such fade things, one may be confused except one has crammed it word to word. All three witnesses are noticed by the Court to be very natural witnesses. Had they been telling something other than truth, they would have met each other before their statement at SIT or before their deposition before the Court, but they were since quite natural, the confusion in the mind of them came out in the testimony. What is observed by this Court is, that the confusion is not related to whether the mobile instrument was handed over to a responsible police officer or not or whether the same mobile phone was handed over by whom. It is also not on a point that the mobile phone was handed over by PW 135 to PW 237 who handed it over to PW 245 or not. The confusion is only on a very very limited point as to when all three went together to the police commissioner and when only two of them went to the police commissioner. Here the most affected person from the occurrence of the homicidal death of her brother is PW 135. According to her version, firstly the mobile instrument was deposited by PW 245 and thenafter some days, she was taken to the Police Commissioner for identity of the mobile instrument. PW 245 and PW 237 are in a way not very much concerned with the entire affairs hence they would only

remember that once they have also taken PW 135, but whether that is at the time of depositing the mobile instrument or later on only for identity of the mobile instrument would naturally be forgotten by them and hence, on saying the minutest details on when PW 135 was taken, they seems to have been confused, but merely such a meager confusion is not sufficient to doubt their version. The common recitation in the testimony of the three is, the mobile instrument was with PW 135 who gave it, in turn, the same was taken to the office of Police Commissioner and ultimately to the I.O. who recovered it.

(b-2) Moreover, it is important to note that PW 135 has identified A-38 in the T.I. Parade and that that being an official act, it is presumed to have been done properly and therefore, reading the conclusion of T.I. Parade with the above confusion highlighted by the defence, it can safely be held that the prosecution has proved its case through all three natural witnesses beyond all reasonable doubt.

(b-3) This entire discussion proves beyond all reasonable doubt that the mobile instrument was handed over by PW 135 to PW 237 who, then gave it to PW 245 who in turn handed it over to the Police Commissioner, then after the said was identified by PW 135, the Assignee Officer has then adopted necessary procedure to take over the custody of the mobile instrument and to deposit it to the I.O. PW 277. With the testimony of all concerned, the entire circle stands completed without any break.

20. PW-135 :

(a) The gist of examination in chief of the PW is as under :

"I am a resident of Patiya at Hussain Nagar, in the 2002, my brother died in the riot.

I was staying in rental house at Hussain Nagar with husband and brother.

At about 8:00 or 8:30 a.m., shouts of “kill and cut the Muslims”, came out towards Nurani, people were burning tyres and were shouting slogans “kill and cut Miyas” and were also pelting stone.

I was near the public water tap where Padmaben was selling vegetables. I saw mob from Krishna Nagar and from Natraj, the mob from Natraj came to Nurani, did arsoning at Nurani, Muslim males came forward to save the Masjid, both the communities were pelting stones against each other.

Muslims went to police, the mob on the road came to Hussain Nagar, did arsoning, climbed up on the house of Rashidbhai, then burnt his house, destroyed his households, because of this we ran away.

Salimbhai was my landlord, he took away his family, the mob spread in our Chalis. I and my brother went to the terrace of our house to hide ourselves. By this time, burning, arsoning, destroying was on-going by the members of the mob. I closed my house from inside, I went to terrace, then I along with my brother came downstairs. The doors of our house were

broken open by the people of mob using dagger and axe. Three gates of our house were broken open. The mob entered in our house who were 4 to 5 people. One of the persons had police rod in his hand, he started beating my brother with it, I intervened to save my brother, but of no avail. My brother was pulled outside and they took him to the house of Jadi Khala, I kept on requesting them not to beat my brother, my brother was attacked with sword, who was then thrown in (Charpai) cot lying there, which was then turned turtle, my brother was tied by his legs on the cot and then acid was poured and then by putting cotton bed-roll on him, he was burnt alive.

The mobile phone of the person causing cruelty to my body, who was also present and participated in the crime, was found lying there, I had to move from there, I hid myself in a latrine of Javed, I was also beaten.

At about 4:00 p.m., I went to Street No.4, Hussain Nagar where on the terrace about 300 to 400 Muslims were there. I stayed there upto 2:00 a.m., then went to camp at Shah-E-Alam in police vehicle.

My husband returned home in the evening when the houses were burning in our Chawl, the people of the mob were following my husband, who with difficulty, reached GIDC, Mudhia, and then met me at camp.

The mobile phone found by me on the date of incident from that site was handed over by me to one Sultanbhai with the description of the fact as to how I could trace it.

I also informed the fact to one Sultanbhai and Mohsinbhai Lawyer. Then Nadim gave the phone to Police Commissioner, Ahmedabad.

My entire house, cash, ornaments, households were destroyed and burnt.

The mobile was of Ashok Sindhi (A-38). Identification Parade was held where I identified Ashok Sindhi, my complaint is at Exh. 880."

This witness identified A-58 instead of A-38 in the Court. This shows that A-58 is familiar to the PW as a person to have been present in the mob. This is only a circumstance. This circumstance is not the evidence proving involvement of the A-58 but, this does show that the presence of A-58 cannot be ruled out altogether. Hence, in the case on hands, if any case is made out against A-58, this notable point would act as circumstance. The PW has even identified the muddamal mobile phone.

(**b) CROSS-EXAMINATION OF PW-135 :**

(b-1) The entire examination-in-chief is over all satisfactorily tallying with all the concerned witnesses and the relevant documents.

(b-2) At paragraph 34, 35 and 36, the cross-examination is on some of the contents of Exh.880, the complaint of the complainant, from which no serious contradiction has been

noted which would create doubt about the prosecution case, as has been put up through this witness.

It is true that the witness could not identify A-38 in the Court and instead of that she has identified A-58. When the T.I.Parade Panchnama is reliable piece of evidence and when the witness is deposing after about 8 to 9 years and when for long, viz. right from the date of the occurrence, the witness has shifted her residence from Patia to Vatva and when the witness has passed through the suffering of witnessing horrifying incident of the cruel, homicidal death of her brother, it is quite natural and probable that such witness may get confused that too, when in front of so many persons in the Court, the witness has to identify the accused.

(b-3) When the T.I. Parade is held to be credible and when the proprietary of the official act of PW 34 cannot be doubted, the question of doubting the witness for not identifying the accused in the Court does not arise. Doing so, would be sheer miscarriage of justice which cannot be done. This case has very very peculiar facts and circumstances and hence, dealing of the facts and circumstances of this case has to be very very peculiar. The Court cannot adopt the mechanical approach and the appreciation of the evidence cannot be so done. It is unusual that the trial would take so long.

(b-4) The witness after these many years could not identify the muddamal of mobile instrument does not create any doubt. The recovery of the said muddamal has been done by a Senior Police Officer of the rank of A.C.P. viz. PW 277 whose investigation has not been doubted by the Court. Rather

that investigation is found to be satisfactory, but there also, a point cannot miss the sight of the Court that the proceedings like drawing the panchnama of the site of the offence, recovery of the muddamal etc. which is being done in usual case immediately after the occurrence, could not be done in this case for 3 to 4 months.

Considering all the facts and circumstances of the case, T.I. Parade can be relied upon and that the substantial evidence of PW 34 is satisfactorily proving the identification of A-38 to have been properly done by PW 135. Substantial evidence of PW 277 proves the genuineness of the proceedings adopted for recovery of the mobile instrument.

(b-5) In the cross-examination of PW 135, there does not appear any substantive challenge to the process of T.I. Parade. The mention of A-38 is held to be sufficient and satisfactory.

(b-6) Paragraph 39 to 44 of the cross-examination are related to veracity of the knowledge of the witness about the referred persons. Suffice it to say that no doubt has been created by this part of the cross-examination against the prosecution case.

(b-7) Paragraph 45 to 55 and 95 to 99 are all related to the panchnama Exh.888, the compensation money of the deceased brother, the complaint Exh.888, which all have been discussed. Hence, need no repetition.

(b-8) Paragraph 56 to 58, 93, 110, 118, 125 to 129 are related to certain immaterial contradictions which are too

common to occur and which cannot be given any weightage unless it contradicts the prosecution case as a whole which it does not. It is opined herein that the contradiction mentioned, have been found to be immaterial as, it is to be remembered that the words from the testimony cannot be caught, what can be looked into is, the spirit of the testimony. Seeing all that, the prosecution case is not contradicted at all.

(b-9) Paragraph 130 is about the injuries of the PW and paragraph 131 is about the knowledge of PW on the use of the mobile which both are found to be absolutely irrelevant, immaterial and worthless for the appreciation of the testimony of this witness.

(b-10) Paragraph 132 and 133 is again related to Exh.880, the suggestions and denial there on. Since Exh.880 is by and large found to be tallying with the version of PW 135, this part of the testimony is not helping the defence.

(b-11) The cross-examination at paragraph 134 and 135 are related to the conversation with Mohsin and relationship or introduction of Haidarbhai, which are not found of any worth to create doubt against prosecution version.

(b-12) Paragraph 136 to 139 are related to SIT application, the appreciation of which has been dealt with at Part-2 of this Judgement, hence need no repetition.

(b-13) Paragraph 140 and 154 to 156 are related to the contact by veiled persons which all has not at all been said by the witness in the chief-examination which, therefore needs no

discussion, even that does not prove any defence including the improbability and impeaching credibility of the witness.

(b-14) Paragraph 145 to 148 and 149 are all related to the conversation the witness had, if any, with the inmates at the Relief Camp, the application before the Police Commissioner, the conversation with the husband of the witness at the Relief Camp etc. are the subject of cross but, it is not understandable as to how all those facts, in any way improbablise the prosecution case put forth by this witness.

(b-15) The other part of the cross-examination is usual denial, suggestions etc., the purpose of which is not at all clear. Suffice it to say that it does not create any doubt against the credibility of this witness.

(b-16) If the notes of the Court below paragraph 156 are perused, it is clear that the witness has expressed her fear against A-38, which is notable. The threats received by the witness from one veiled person has also been highlighted during the cross-examination and not during the examination-in-chief.

(c) OPINION :

(c-1) Even if it is assumed that mobile was not picked by the PW-135 from the site, the said was not the mobile of A-38 then also, the fact of success of T.I.P. and genuine identity of A-38 remains intact. Nothing rebuts the presumption of proprietary in the official act of T.I.P.

As has been held at Part-2 in the chapter of TIP while discussing TIP of A-38, whether A-38 had identification marks or not is not important or material in the facts of the case. If PW 135 would have identified A-38 in TIP because of his identification marks then the same could have been repeated in the Court by the PW 135, but here she could not identify A-38 which itself is showing that PW 135 is very natural and not a tutored witness, moreover, it also shows that identification of A-38 in the mind of the witness has nothing to do with the identification mark even if A-38 had on that day (the defence puts up such case).

This witness is an eyewitness of the ghastly murder of her brother, she picked up the phone of one of the miscreant whom later in TIP she identified as A-38, the miscreants were 10 to 15 in number who murdered her brother. The mobile phone of one of the persons fell down from his pocket and that person was none else but A-38 according to PW 135. After so many years, she may not have confidence to identify the accused or there may be some other reasons. As it may be, but the fact remains that PW 135 is found to be most reliable, natural and truthful witness. Upon her sole testimony, the guilt of A-38 can safely be brought home. No malice or reasons to falsely involve A-38 are on record.

(c-2) If Paragraph 218 of the testimony of PW 158 is perused, it becomes very clear that there is a brilliant probability of this witness to have witnessed the part played by A-38 from the latrine of the opposite house. This was noticed to be probable even on the date of visit of site by the Court.

(c-3) There is absolutely no material on record to disbelieve or to impeach the credibility of PW 135 and that no reasonable doubt stands created by any facts, circumstances, cross-examination or any material on record.

(d) FINDING OF PW-135 :

(d-1) The presence and participation of A-38 clearly stands proved in murder of deceased brother of PW 135, Hasanali Momhamadali Mirza in the morning occurrence beyond reasonable doubt.

(d-2) The homicidal death of Hasanali Momhamadali Mirza had occurred on the date, time and place of the offence in the communal riot dated 28/02/2002.

(d-3) The complaint EXH.880 and SIT application EXH.896 corroborate PW-135.

(d-4) Identity of A-58 is a circumstance against him.

21. PW-137 :

(a) The overall impression which this Court has about the PW is, she was very much mentally disturbed and was not properly in her senses on the date of her deposition. Her version before the Court has not inspired confidence of the Court. This Court is of the opinion that it is not safe to act upon the deposition of this witness. The glimpses of her deposition on the topic of injury sustained by herself are as under, which would speak for itself :

(b) At para 7 the meaning of the version of the witness is that, she was given Gupti blow by Guddu. This sentence is with reference to context of para 6 wherein it becomes amply clear that the mob was near Teesra Kuva and the witness along with her family member was there, there she was injured.

It is in short, in any case, according to para 7 the Gupti blow to her was not in her house.

(b-1) At para 53, she states that she was at her home upto 1:00 p.m. in one breath and in another breath she says that she was at her home upto 5:30 p.m. Even if her version is taken up as it is, in any case, she was there at home upto 1:00 p.m.

(b-2) At para 54, she states that Guddu and Tiniyo came to her house on motorcycle and told them 'do not move from here, nothing will happen'. This is her voluntary statement without any stimuli by the cross examiner.

(b-3) At para 57, she says that the Gupti blow was given to her at 10:00 a.m. when she was at home. Except at her home, the Gupti blow was not given anywhere else.

(b-4) At para 57 she also states that in only one Gupti blow on her hips she was bleeding, her clothes were blood stained, bloodshed was even on the tiles in the house and that 28 stitches had to be taken.

(b-5) At para 59 she states that after the Gupti blow she remained at home upto half an hour (say upto 10:30 a.m.).

(b-6) At para 61 the witness states that she was also given another Gupti blow on her hip at tank.

She also states that both the injuries of the Gupti blow was on the hips which were two injuries side by side and another Gupti blow was at 6:30 p.m. The treatment was done at about 2:00 a.m. after going to the Camp.

(b-7) In the opinion of this court if the above entire version is seen it does not sound to be a talk of any reasonable rational person. It is apparently inter-se contradictory. On one hand the witness says about only one Gupti blow and on the other hand, she says two Gupti blows were sustained by her, that too one was at 10:00 a.m. at home and another was at 6:30 p.m. at the outside and for two injuries at the same place, 28 stitches had to be taken at 2:00 a.m. at the Camp. All these is not penetrable one and is not tallying to each other.

(c) There are lot of material omissions and contradictions like the witness has not stated the incident of Gupti blow inflicted at her home at 10:00 a.m. before SIT.

Not only that, but it is stated by the witness that in the statement of SIT dated 30/5/08, she has stated that the time of the occurrence is not 10:00 a.m. but it was 6:00 to 7:00 p.m.

(d) Para 103, 105, 107 are all such, which speak for itself and need no elaborate discussion. Suffice it to say that the witness was not within herself, was making many many

contradictory versions like the time of the Gupti blow is 10:00 a.m. in one breath and 6:30 p.m. in another breath. Moreover, the place to sustain injury is residence at one place and water tank at another part.

(e) This witness is also not tallying with her husband PW 114 and with her injured daughter PW 160 for whom, the witness is telling that she was burnt by A-56, 60 and others by throwing the mattresses soaked in inflammable substance.

(f) PW 114 states that the deceased son Shamshad was with him, but this witness states that he was with her and both are telling that they were separated in the occurrence, but if the deposition of PW 114 is seen and if the deposition of PW 160 is seen it seems consistent, reliable, rational and dependable.

(g) While fastening criminal liability on any of the accused, the judicial conscience must be satisfied that the Court is depending on a truthful and dependable evidence which is deposed by a person who is the witness who came to assist the Court for administration of justice. Every witness, just because that person is victim of the offence, cannot become dependable. Through this witness, the presumption of innocence which marches with every accused does not stand rebutted as, her evidence is not found to be positive, clinching, credible and dependable. She may not have any intention to falsely rope in any accused, but merely that is not sufficient, she needs to pass through the test of reliability as well. She involves A-22, 26, 56, 55, 61 and Guddu and she does not identify A-26.

(h) OPINION :

In light of the foregoing discussion this Court is of the firm opinion that this witness is not proving the prosecution case and this witness is not dependable at all. A-26, 56, 55 & Guddu need to be granted benefit of doubt qua the PW.

(i) FINDING OF PW-137 :

(i-1) A-22, A-56, A-55 and A-61 have been granted benefit of doubt qua this PW.

22. PW-138 :

(a) The gist of the examination in chief of the PW is as under :

"I am a resident of Street No.4, Hussain Nagar.

At about 9:00 or 9:15 a.m. I saw a mob with weapons near Natraj Hotel with Khakhi shorts and white vest. I went to my home, stone pelting started, I went to Nurani, saw stone pelting on Nurani and on our Chawls, Muslims sought police help, but no help was given. Abid sustained bullet injury, police bursted teargas. I fell down in the hit and run situation created there and sustained fracture.

I was taken to terrace at 3rd floor, I saw S.T. Workshop people doing stone pelting and burning our rickshaws and houses.

At about 2:00 p.m., Dalpat, Guddu and Sehjad came in my house, they took away iron cupboard and Rs.40,000/- cash. They were accompanied by other people who all robbed my households which, I saw from my terrace.

Upto 1:00 a.m. I was on the terrace, police vehicle came, Naroda P.I. Shri Mysorewala told that how so many people could survive. I was taken to camp where I was treated for fracture.

Dalpat and Guddu have died. I know Shehzad (A-26).

On 14/5/02 I was called as panch for panchnama of the house of Abdulkarim Saiyad Rasul Shaikh (1st C.R.187/02) The Panchnama is at Exh. 929.

On 25/6/02 at about 2:00 p.m., I was called as panch for the panchnama of the residence of Hasanbhai which Panchnama is at Exh. 931".

A-26 has been identified correctly by this witness.

(b) CROSS-EXAMINATION OF PW-138 :

(b-1) The witness was also a panch witness of the panchnamas of damages at Exh.929 and 931 of two different houses. There is no material on record to doubt the said fact and through this witness the damages of two houses have been proved by the prosecution beyond any reasonable doubt.

(b-2) The suggestion at para 28 makes it clear that there is prior acquaintance of A-26 with the witness. Here this witness has also clarified that A-26 is residing near his house, the PW does see him everyday and knows him prior to the occurrence.

It is true that the witness has admitted that he has once entered into fiscal transaction with the A-26 and that he has no dues payable to A-26. The explanation in form of voluntary statement seems to be full of truth that such transactions are oral transactions as A-26 is obviously not a licensed financier.

There cannot be any hard and fast rule that one who lends money to another, would always be falsely involved in the crime by the said borrower. This court sees the ring of truth in the version of the witness.

(b-3) At para 31, the question on Dalpat and Guddu does not prove any defence as in their cases, since they were admittedly resident of the same area, the court infer prior acquaintance with both the deceased of all victims.

(b-4) Para 36, 37, 38, 39, 40 & 41 are related to the statement of previous investigation which carries no weightage as the investigation has been held unreliable.

However, if para 39 is seen even according to the statement of the year 2002 of this witness, he involves all the three named accused with the similar allegations, hence in any case no doubt is left out about the truthfulness of the witness.

(b-5) There is no material omission highlighted by the defence from the statement before the SIT as, even before the SIT, the witness has stated the same facts.

(b-6) From para 47 and 48 the attack on Nurani and the Muslim Chawls by pelting stones stands confirmed.

(b-7) Para 52 is on the aspect that it was not probable to take out the iron cupboard from the house of the witness, but in view of the answers given by the witness and without the specification of the said cupboard, there is nothing to doubt the version of the witness.

Para 53 clarifies that witness himself is an eye-witness of the looting of his cupboard by the miscreants, including the accused.

(b-8) At para 63 & 64, it is clearly revealed that the witness has not produced any injury certificate to establish his injury but, this topic has already been discussed in depth at Part-2 of the judgment. Suffice it to say here that it is not essential as well, when the oral version of the witness is found convincing and reliable.

(c) OPINION :

(c-1) Through this witness the prosecution has proved the involvement of deceased Guddu, Dalpat and A-26 in the occurrence of morning at Nurani and in the occurrence of 2:00 p.m. of looting the house of this witness by the three accused.

However, in view of the common object and intentions shared by the accused, there does not seem to be any mens rea as required for theft of iron cupboard. Considering which, the ingredients of theft does not stand proved. After seeing the V.C.D. in fact, the dwelling houses have mainly been found to have been burnt, destroyed and damaged. Hence, the theft does not stand proved. The object was only to cause damage to the victim instead of dishonestly taking away the movable properties.

(d) FINDING OF PW-138 :

(d-1) A-26, deceased Dalpat and Guddu are held to have been involved in the morning occurrence at Nurani and in the noon occurrence of looting of the house of the PW.

(d-2) Damages of two houses stands proved.

23. PW-141 :

(a) The gist of the examination in chief of the PW is as under :

"I am a resident of Jawan Nagar Khada.

My wife informed me at about 8:30 a.m. about the mobs. I saw people coming towards our Chawl from the Khada of Jawan Nagar. The mob was shouting “kill and cut”. I went along with wife and children towards SRP Quarters and kept them in one closed house.

The police did not allow to enter in the SRP Quarters and told us that today is your doomsday.

I saw the persons of the mob destroying, damaging and shattering the things into pieces. I saw Guddu, Bhavani and Suresh Langada. They were beating the people and making the people to run away. They had swords, tridents and weapons.

At about 6:00 p.m. I was near the wall of SRP Quarters along with 20 to 25 other persons. A mob passed from this wall at about 7:30 p.m. We could hide ourselves. I had injury because of stone pelting. We went to camp. Guddu and Jay Bhavani had died".

The PW could not identify Suresh Langada (A-22).

(b) CROSS EXAMINATION OF PW-141 :

(b-1) During the course of the cross examination, it is revealed that the witness has filed one affidavit at Exh.960 to which the witness perceives to be his complaint.

(b-2) The witness is illiterate and does not know to read and to write, he puts thumb impression, but he has also learned to sign.

(b-3) The witness did purchase the stamp paper along with other such persons.

(b-4) The contents of the affidavit were explained to him. The witness states that it was his voluntary statement.

The entire cross is mainly on the affidavit, the witness has not filed any other complaint, the statement before the police by the witness was stated by the witness to have been recorded.

(b-5) The uniform mechanical sentence of the SIT has been highlighted during the cross. The witness is a labourer.

(b-6) If para 39 is seen it is clear that the witness states that he was injured on his leg on account of stone pelting and that he has so stated before the police, but still the sentence in the statement is noted as, "anyone from my family has not sustained any injury.”

In the opinion of this court this is also one more illustration of the kind of the victim witnesses who are in this case, who are telling all affirmative replies without understanding in detail. This witness is though stating that he has stated about his own injury and even though such facts is missing in the statement, the witness has still given affirmative reply to such a statement.

(b-7) It is also exhibiting what kind of statements were written by the previous investigators. If this is not the illustration of self styled statement written by the police then what else can be the illustration.

(b-8) The only shortcut, as has already been held, to hold

that the previous investigation is not reliable. Hence, contradiction and omission, if any, from the previous investigation, is held to be of no consequence.

(b-9) Para 43 clarifies that the witness has sustained damages at his house in this communal riot.

(b-10) Para 47 shows that the witness has seen Guddu and Bhavani on that day at Jawan Nagar.

(b-11) The witness is a witness of occurrence and damages who was knowing Guddu and Jay Bhavani as it is admitted an position.

In the examination in chief itself the witness has specified that the witness does not know A-22 and he is unable to identify A-22. Considering which and when no T.I.P. is held, the A-22 is entitled to benefit of doubt qua this witness.

(c) FINDING OF PW-141 :

(c-1) Through this witness presence and participation of deceased Guddu and Bhavani stands proved in the morning occurrence as well as in the evening occurrence beyond reasonable doubt.

(c-2) Damages of his house stands proved.

(c-3) A-22 is granted benefit of doubt qua this PW.

24. PW-142 :

(a) The gist of the examination in chief of the PW is as under :

“I am a resident of Street No.2, Jawan Nagar. I am illiterate, I myself do the business of fruits in my house. My husband was plying rickshaw of our ownership.

At 9:00 a.m. children were rushing and running and told us that there is stone pelting on Nurani. I dropped daughter-in-law, daughter and children at SRP Quarters. One boy named Ahmed was hit by bullet, stone pelting near S.T. Workshop was going on at this time. At this time, Bhavani came to us and told to us 'go home, nothing will happen', we went home.

At about 11:00 or 11:15 a.m. Bhavani came to our Chawl and asked for the vessel to cook *khichadi-kadhi*. He told us that 'you are to die, you are not going to be saved'. He abused us.

On his signal, the mob came there in which Suresh, Guddu, Shehzad and Bipin were leading the mob. Suresh, Guddu and Shehzad had swords, Guddu was telling Bipin to fire, Bipin had a pistol.

We ran away towards SRP wall. At this time, it was about 2:00 or 2:30 p.m., we were four, I, my husband and my two sons Jumman and Rafiq, near SRP wall there was police, they bursted teargas shell, they did not allow us to go inside and told us showing the newspaper as to 'how your people

killed at Godhra, today none of you shall survive, let us see how your Allah saves you'.

We went to the terrace of one woman at Gangotri, where the entire society was vacant, we sat in a very huge house which was open, there also some persons came to tell us to go out otherwise their society would be burnt, they told us to go at Naroda but, since it was far away, we told them 'how can we go we would be killed on the way', then those persons started beating us and told that 'today you have to die' thereafter we left that house of Gangotri.

We then went to adjoining Gopinath society. At that time, the youngsters of that society have injured my son Jumman and Rafiq respectively by hockey and pipe. They told us to go away to Naroda. We met Maroofbhai and Nurubhai there. Here my children were also lost. Some of the Muslims left this society, I was in the *khancha,* in between Gopinath and Gangotri societies, I saw that the clothes of the girls were being torn off and the girls were being burnt. The mobs came from two sides, in this mob I saw Bhavani, Guddu, Suresh Chhara (A-22), son and elder daughter of Bhavani, the elder daughter of Bhavani was giving petrol and kerosene in white container, Bhavani, Guddu, Suresh, son of Bhavani, who is a lawyer and the elder daughter of Bhavani came in the mob from one side at this place.

The women whose clothes were being torn off and who were burnt were Khairunnisha, Nasimbanu, Sufiyabanu, Nargisbanu and one another woman. It was 04:30 p.m. then.

Bhavani was pulling one Kausharbanu who was shouting that, 'I may be relieved for the sake of 'Allah' as I am pregnant on full term.' At this time, Babu Bajrangi (A-18) came, gave her sword blow on her stomach and her child was taken out in the sword and it was told that 'before the child comes, the child is killed'. Thereafter, the child and Kausharbanu were burnt as the daughter of Bhavani provided kerosene and Bhavani poured kerosene on Kausharbanu and her new born infant.

I was at *khancha* at this time and it was about 5:30 p.m., I then went away to Gangotri. I then went on the terrace of Gangotri and sat there upto 11:00 p.m., then I was taken to Relief Camp.

I have suffered much damage in my house, the households, the dowry prepared for the marriage of my daughter, cash, ornaments were looted and my house was burnt. My son Jumman was residing in separate house, whose house and households were also burnt.

Guddu and Bhavani had died. I know Suresh (A-22), Sehzad (A-26), Bipin (A-44), son of Jay Bhavani (A-40), who is a lawyer and daughter of Jay Bhavani (A-61) and they can be identified by me."

The witness has correctly identified A-61 (daughter of Bhavani), A-18 (Babu Bajrangi), A-22 (Suresh), A-26 (Sehzad), A-44 (Bipin) and A-40 (son of Jay Bhavani).

A-18, A-22, A-26 and A-44 have been identified by

name, whereas A-61 and A-40 have been identified as daughter and son of Bhavani.

(b) CROSS-EXAMINATION OF PW-142 :

(b-1) The witness has been confronted on the statement of the year 2002 recorded before the previous investigator, which needs no consideration.

It only needs a note that in the statement of 13/04/2002 (revealed in cross) the fact of one Muslim pregnant woman was stated, who was given sword blow etc., then that woman was burnt alive, whose name is not known to the PW (Para. 145).

This is brought on record by the defence and this shows that ultimately, the sum and substance of the entire incident on the name of Kausharbanu stated by the witness, can be put up in the manner it is written in the statement of 13/04/2002.

(b-2) At paragraph 34, it becomes clear that the son of the witness did sustain injury while they were outside their house before 02:30 p.m. This part of the cross-examination proves the injury to the son of the witness.

(b-3) At paragraph 35, it is stated that the terrace on which the witness has taken shelter was the terrace of Ghori Appa and that, from that terrace, the people were dropping to the terrace of Gangotri Society which is the society of Hindus. This probablises her going upto *khancha* near Gangotri.

(b-4) At paragraph 99 and 97, the prior acquaintance of the witness with the deceased Bhavani stands proved along with the fact that she knows the residence of Bhavani. The clarity on identity about A-40 and A-61 in the mind of the PW is also getting proved as she refers them respectively as lawyer, son and daughter of Bhavani. Even paragraph 100, 125 and 126 prove the acquaintance with the daughter of Bhavani.

(b-5) At paragraph 112, 113 and 142, the prior acquaintance stands proved with Guddu, who was known right from his childhood to the witness and he was also known since his house was also in Jawan Nagar.

(b-6) At paragraph 38, the witness states that she was knowing the women whose clothes were being torn since, they were from Jawan Nagar and their parents were also known to her.

(b-7) At paragraph 202, the prior acquaintance with A-44 stands proved.

(b-8) At paragraph 89, it stands confirmed that the evening occurrence about which the witness has deposed in depth, is the occurrence of water tank area, which she refers as *khancha*.

(b-9) In paragraph 13, it is deposed that the men of the mob came at the site of the occurrence (of water tank) between Gopinath and Gangotri where the witness has seen the named accused - viz. Bhavani, Guddu, A-22 and A-40 in the mob which

came at the place where the girls were being burnt, after tearing off their clothes. It is alleged that A-61 was giving kerosene or petrol from white container. Paragraphs 13 and 8 mention that A-40 and A-61 were in the mob at evening only. A-40 was not assigned any role in this evening mob. For A-40, except his presence, nothing else has been contended whereas for the remaining accused i.e. A-22, Bhavani, Guddu, A-26 and A-44, they have played different roles as discussed earlier, hence their presence and participation both have been proved whereas for A-40, no overt act has been alleged.

For A-61, the PW states in her testimony that A-61 gave petrol or kerosene to Bhavani to burn Kausarbanu, but as replied by PW 327 in SIT, she states before SIT that A-61 gave petrol or kerosene to the members of the mob which mob came at *khancha* in the evening. This difference in role ascribed against A-61 to have been played at the site of offence in the riot, creates reasonable doubt on account of the difference, hence the participation of A-61 is doubtful.

(b-10) At paragraph 100, it stands proved that the witness was knowing the daughters of Bhavani viz. A-56 and A-61 which is common, as they were neighbours.

(b-11) Paragraph 105 proves that the witness has not seen any rape being committed but then, the witness has not so stated in her examination-in-chief hence, such question itself is irrelevant as the PW is not deposing on rape.

(b-12) The sum and substance of paragraph 120 to 123 is, the witness states to have seen the pregnant woman being

attacked and to having been given a sword blow on her stomach. The attempt by the cross-examiner is to highlight that the witness is exaggerating and the incident is not probable.

(b-12.1) While appreciating the probability of the incident, on the face of it, the incident is not probable as put up by the cross examiner in his suggestions. As far as the incident of Kausharbanu is concerned, at paragraph 137, it is admitted that Kausharbanu was daughter of Khalid Noor Mohammad Shaikh (This means that she was not an outsider), the PW has also said that she knew her from her childhood. At paragraph 167, the PW has admitted that one with whom the incident had happened and one who was pregnant Muslim woman, was the only case of Kausharbanu among Muslims.

(b-12.2) In deposition, A-18 has been ascribed the role of giving sword blow on stomach of Kausharbanu, but before SIT, this role has been assigned to Guddu. In SIT, no role is assigned to A-18 by the PW. In SIT, no role is assigned to A-61 of giving inflammable to Bhavani to burn Kausharbanu as against the deposition.

As a result, the role assigned to A-61 and A-40 becomes doubtful and hence, both of them are entitled to benefit of doubt qua this PW. Even A-40 also deserves benefit for the reason that, he was merely present at the site without doing any overt act including possessing weapon at the site.

(b-12.3) It is not important as to what was the name of that woman whose stomach was slit, what is important is, whether such occurrence has taken place or not.

The arguments of defence as well as the spirit of entire cross-examination on the topic is to submit that such occurrence with pregnant woman has never occurred and that the entire incident is got up, concocted and is totally a perverted presentation.

(b-13) At paragraph 14, this witness has stated that she has seen the clothes of Nasimbanu being torn off, PW 158 and many other eyewitnesses and even PW 205, (wife of PW 158) who was herself a victim of gang rape, have deposed on rape and gang rape to have taken place. In extra-judicial confession, as discussed in the chapter of Sting Operation, A-22 has confessed that 2 to 3 of the accused have committed rape. Speaking for himself, A-22 states that he did rape on Nasimo. Considering the entirety of the facts and circumstances of the case, the rape on one Nasimo, stands proved to have been committed by A-22 as has been confessed, and stands supported which passes the test of probability, beyond all reasonable doubts as, there is absolutely nothing on record to disbelieve it. At the cost of repetition, it is opined that in the facts and circumstances of the case, the extra-judicial confession of the accused is satisfactory and sufficient evidence and that, it itself is singly able to prove the guilt. The other points have been discussed merely to come to a more firm conclusion which has in fact been concluded by the Court on the extra-judicial confession of A-22 on rape and A-18 on slitting the stomach of a pregnant Muslim woman.

(b-14) The contradiction of the statement other than SIT, have not been considered by this Court, but when it is not even

stated before SIT then, the Court has to act safe in believing the said version.

(b-15) The witness has stated about prior acquaintance with the accused, she has identified the accused in the Court, she has stated that she resides in Jawan Nagar since last 20 years, she is aware about the topography wherein she says in paragraph 80 that the Gangotri Society is at the distance of 2 minutes from her house, which all if put together, shows the brilliant probability of the witness to have been knowing all the accused very well.

(b-16) The witness states that the incident of tearing of the clothes and then burning the woman happened first in point of time, then after the incident of Kausharbanu took place.

(b-17) The occurrence is stated to have happened at about 05:30 p.m., which has been seen by the witness from *khancha*. This Court is of the opinion that the witness is confused on the occurrence of Kausharbanu and the involvement of Guddu and A-18. This does not mean that the witness is a liar and is falsely involving the accused, but it shows that on account of numerous occurrences, sudden and shocking occurrences, commission of ghastly offences and these occurrences, since were happening in quick succession before even flicking of eyes, this witness, like many other witnesses, can be confused. The confusion tends to be added when during the course of cross-examination, numerous exaggerated imaginations are loaded on the mind and memory of the witness, who, in the open Court, would remain in hesitation as to whether such suggestions had in fact happened or not. In nutshell, in such

cases of man made calamities, the Court has to keep all this in mind while appreciating the evidence.

(c) OPINION :

(c-1) Through this witness, the prosecution is not successful in proving the case of slitting the stomach of Kausharbanu and then burning her alive by taking out the fetus from her body. However, the possibility and probability of the occurrence of doing away with one Muslim pregnant woman is found to be probable as even A-18 has admitted it in his extra-judicial confession. The occurrence of Kausharbanu can be accepted as far as her homicidal death at *khancha* is concerned in which she was killed by attacking on her stomach.

On the aspect of tearing of the clothes of girls it is opined that it is too general an allegation and in absence of even name of the victim, it remains an allegation only and not a proved fact.

(d) FINDING OF PW-142 :

(d-1) The incident of Kausharbanu as narrated by the witness is doubtful qua the testimony of the PW is concerned, to have occurred as far as Kausharbanu, daughter of Khalid Noor Mohammad Shaikh is concerned.

However, it stands very clearly established that homicidal death of Kausharbanu was caused at *khancha* which is also supported by PW 158 and PW 228.

(d-2) A-18, A-40 and A-61 are entitled to benefit of doubt qua the version put forth by this witness.

(d-3) The presence and participation of Bhavani, Guddu, A-22, A-26, A-44 stands proved beyond all reasonable doubt as far as the incident of attacking Muslim chawls by the accused is concerned wherein A-22, Guddu, A-26 and A-44 were leaders of the mob who had also weapons and Bhavani was the person on whose signal the attack was done, hence all of them are proved to have been participating in the crime at Muslim chawls before 12 noon in the morning occurrence.

(d-4) The presence and participation of Bhavani, Guddu and A-22 could have been held to be proved beyond reasonable doubt in the evening occurrence of tearing of the clothes of the girls of Jawan Nagar and burning them at *khancha* (General on Rape) if even names of such victims would have been given. This is too general, allegation.

(d-5) The PW has seen the clothes of Nasimabanu being torn off.

The testimony of the PW read with PW 322, PW 158, PW 205, etc. and further reading it with the contents of the sting operation, this court, further reading it with circumstantial evidence held without hesitation that :

Rape on one Nasimobanu was committed in the evening occurrence by A-22 on the date and site of the offence.

25. PW-144 :

(a) The gist of the examination in chief of the PW is as under :

"I along with my family was residing at Hukamsinh's Chawl. On that date, at about 10:00 a.m. to 11:00 a.m. mob of about 10 to 20 thousand came which was pelting stones, attacking with gas cylinders by torching the houses and even vehicles like scooter were also burnt on the road.

In this mob I saw Guddu, Suresh (A-22), Bipin (A-44) and Kalu Bhaiya (A-27). I know Suresh Chhara and Kalu Bhaiya since they belong to our locality. I know Bipinbhai who was doing work of Auto Consultant in our area, Guddu had died, I can identify all of them".

The witness has correctly identified A-27 and A-44, whereas A-22 was exempted on that day from appearance.

(b) CROSS EXAMINATION OF PW-144 :

(b-1) As stands revealed PW 145 and this witness are real brothers, the witness has prior acquaintance with all the accused, as is clear in the chief itself.

(b-2) There is no substantial challenge about the fact of the mob having came and the acts and omissions by the mob which all, therefore, stands proved.

(b-3) The witness has been cross examined on topography, para 18 reveals that the shops in the line of Nurani Masjid

were all burnt on that day, which is also the prosecution case.

(b-4) Upto 10:00 a.m. to 11:00 a.m. the situation was not that much disturbed and the stone pelting etc. continued upto 6:00 p.m. which is also largely the prosecution case.

(b-5) Para 23 states that Muslims did stone pelting in between 1:00 p.m. to 2:00 p.m. to save their lives to which, in fact, no much dispute is on record.

(b-6) Para 24 & 25 spell about a hall to be on the road at that time, which was visible from Dilip's Chawl. This tallies with the version of A-52, where she has seen the watchman of the hall and his family to have been killed on that day.

(b-7) Para 29 clarifies that the witness went to Jawan Nagar in the evening at about 6:00 p.m. to 7:00 p.m. and then from there he went to SRP where he was not stopped by anyone and that his father has sustained injury in the occurrence.

(b-8) At para 36, the witness proves his knowledge of addresses of all the named accused, at para 42 how close the Saijpur Fadeli and etc. is, has been brought on record and at para 44 how does he know the accused has been highlighted which all strengthens the finding of prior acquaintance.

(b-9) Para 48 rules out tutoring and para 53 states about the fact that even in the year 2002 his version before the police was more or less same which he has told to this Court.

(c) OPINION :

(c-1) Through this witness, need of T.I. Parade is ruled out. What stands proved is, he has not seen many occurrences and, his non-mention would not prove the occurrences to have not happened.

(d) FINDING OF PW-144 :

(d-1) The case against A-22, A-27, A-44 and Guddu stands proved beyond all reasonable doubts about their presence and participation as a member of the mob of miscreants in the morning occurrences in between 10:00 to 11:00 a.m. which had unduly entered into the Muslim Chawls and have committed offences of damaging, destroying and ransacking the property of the Muslims. etc.

(d-2) The PW proves how close fadeli, S.R.P., Hall, etc. are situated from the Muslim chawls.

(d-3) The house of this witness was burnt and the witness has suffered damages.

26. PW-145 :

(a) The gist of the examination in chief of the PW is as under :

"I was residing at Hukamsinh's Chawl along with my family. On that day, at about 9:15 a.m. or so, the mob came which has burnt shops, Masjid etc. upto 11:00 a.m. or so,

thereafter the police firing started, after that the mob unduly entered in the Muslim Chawls where they did arsoning, looting etc. in the Muslim Chawls, in the occurrence my father has sustained stone injury who was treated at Camp.

From about 9:30 to 11:00 a.m. I was on the road. At about 10:00 a.m. all the members of my family left our house, our house was also burnt and looted, I then went on the terrace and from there, I was taken to the Camp. I know the named accused who were in the mob on that day, they were A-1, A-2, A-10, A-22, A-27 A-41 & A-44".

The witness has identified all except A-1 who was exempted on that day.

(b) CROSS EXAMINATION OF PW-145 :

(b-1) The witness was asked about topography, he states that from Dilip ni Chali to Jawan Nagar the distance is only 3 to 4 minutes. This shows how close is the site from the main road as Dilip Ni Chali is on the main road.

(b-2) At about 12:00 noon to about 4:00 p.m., the PW was on the terrace.

(b-3) It is revealed that the mob came from two sides, on the road there were about 100 Muslims, there was cross stone pelting, the police was in front of the Hindu mobs, the PW has filed complaint from the Camp, the police was not writing everything that was complained to the police, the panchnama for damages of his house was drawn, the road was not fully

blocked, only two sides were blocked.

(b-4) PW 144 is brother of this witness.

(b-5) While the witness was on the terrace, he and others sat near the cement net on the terrace. This proves the chance of observation and visibility of the occurrences to the PW and others on terraces.

(b-6) Para 64 reveals prior acquaintance of the witness with A-44, the prior occurrence with other accused is matter of inference as, the witness has stated in his chief that he lives in the Muslim Chawl right from his birth, who was aged about 35 years on the date of giving deposition.

(c) OPINION :

(c-1) The witness has enough chances to observe, to remember and to conveniently see the accused and their activities being on the height on the terrace and having sat near the cement net.

(c-2) The prior acquaintance with the accused is clearly on the record.

(d) FINDING OF PW-145 :

(d-1) This witness proves beyond all reasonable doubt the presence and participation of A-1, A-2, A-10, A-22, A-27, A-41 & A-44 on the date of the occurrence in the morning occurrence.

(d-2) The PW has suffered damages at his house.

27. PW-147 :

(a) The gist of the examination in chief of the PW is as under :

"My parental home is at Jikarhasan-ni chawl, Patia, house of in-laws is at Kashiram Mama-ni chawl, in the year 2002, I was residing in rental house at Imambibi-ni chawl, I am totally illiterate but, I have learnt to sign, on 28/2/2002 I had seen two trucks coming from Krishna Nagar and Kuber Nagar wherein, the persons with weapons and in white coloured clothes with saffron belt on their forehead were seen by me.

I have seen mobs near Natraj Hotel and Krishna Nagar, the men of the mob were burning tyres at Natraj, they were marching ahead, they did stone pelting on Nurani and threw chemical, burning rags, glass bottles on Nurani and these men were Chharas and Sindhis, which all, I saw along with my husband.

I saw the Imam Abdul Salam of the Masjid was injured by stone, the stone pelting was by both the sides, there was firing and some Muslims were hurt by bullet injury.

Between 9:00 a.m. to 10:00 a.m., I saw Guddu Chhara, Suresh Langdo (A-22) and Bhavani in the mob, who were calling the men of the mob closer to us, Guddu and Suresh had swords, Bhavani had trident, seeing all these occurrences, we, the Muslim women, along with our children,

started from our house and went to house of Khairunnisha at Jawan Nagar who fed our children, I came back alone near ST Workshop in search of my husband, I have seen that the houses were being burnt, the gas cylinders were bursted, the men of the mob were reciting "Shree Ram, Shree Ram", seeing all this, I was frightened, at about 1:30 p.m. we went to SRP Quarters, again at about 2:00 p.m. I came out in search of my husband where Taherabibi told me that my husband had been killed, having heard this, I was very much frightened, I went to SRP Quarters where the mobs were shouting cut-kill, I went near water tank, then, at about 5:00 or 5:30 p.m. I went near water tank, there the houses were burnt and shouting of kill-cut were heard.

At this time, Kausharbanu was dragged by Guddu, Bhavani and Suresh and his friends, she was screaming to leave her, at this time she was given sword blow on her stomach who was pregnant, the child came out, then child and Kausharbanu were burnt, we were then taken to camp, after 4 days, I and my children could meet my husband, except my eldest daughter Vinus, none was injured in my family, my house was looted and burnt by men of the mob, Bhavani and Guddu had died, I know Suresh."

The witness has identified A-22.

(b) CROSS EXAMINATION OF PW-147 :

(b-1) The witness has been confronted on the application of SIT in para 66 to 71, the witness has been confronted on the affidavit filed at Hon'ble the Supreme Court at para 84 to 88

and 93 to 104, which both have been dealt with at Part-2 of the judgment, hence it is not repeated.

(b-2) At para 113, the witness has stated the reason for prior acquaintance saying that the accused and she were since, residing in the same area, on some of the occasion she had talked with the accused. At para 33 she states to have been residing in Naroda Patiya area from birth. This rules out the submission of possibility of mistaken identity.

(b-3) At para 33 onwards, she was confronted on topography which is not very material.

(b-4) At para 114 to 116, false involvement of A-22 has been suggested to the PW which has not been accepted by the PW.

(b-5) Any omission and contradiction in the statement of the year 2002 is not found of any worth.

(b-6) At para 22, the witness has stated about the incident of Kausharbanu, but the allegation by name are only for dragging Kausharbanu, she was screaming and the role of giving sword blow on the stomach of Kausharbanu and thereafter burning her along with her fetus, has not been ascribed to any of the accused.

(b-7) In the deposition of PW 327, the uniform mechanical sentence used by SIT has been highlighted which too has been dealt with.

(b-8) At para 494, PW 327 clarifies that in the main statement of 19/05/2008, the witness has omitted about the fact of two truck of the persons to have gone from near Nurani with weapons etc. this is a notable omission as far as the gravity of the occurrence is concerned, but it is immaterial since it does not involve any of the accused, but is in general nature. Hence, it is held that no defence stands proved with the said omission. It cannot be accepted from rustic witnesses to give all accurate details of the occurrence. Describing in general is common to such witnesses hence, it is not material.

(b-9) Para 492 clarifies that the witness is an eye-witness of the attack on Nurani but, she does not identify any of the accused.

(b-10) At para 100, the witness has admitted that, she witness has stated before the SIT that Guddu has given sword blow and had slit the stomach of Kausharbanu and then she was burnt along with the fetus. This is not tallying with examination-in-chief. This admission shows that the witness has given different version on the aspect of Kausharbanu before the SIT hence, on the said aspect it not safe to act upon this part of her version as far as the occurrence of Kausharbanu is concerned.

PW 235 is her husband, whose version satisfactorily tallies with the version of the witness. In fact, according to PW 235, he has put his wife and his four children at SRP Quarters in the morning, thereafter, they have met after several days.

This witness is saying that she has proposed to all to

leave the chawl and go towards Jawan Nagar and then, she, along with her children and others, have started going to Jawan Nagar. From Jawan Nagar she has ultimately gone to SRP Quarters from where she frequently came out as her husband was not with her. Husband is also saying the same thing that they parted right in the morning.

(c) OPINION :

(c-1) The fact about having seen Guddu, Suresh and Bhavani in the mob with weapons at about 9:00 to 10:00 a.m. in the morning occurrence on the road has not been substantially challenged at all. This witness is an eye-witness of the morning occurrence, of the noon occurrence upto 2:00 p.m. and she is also an eyewitness of some of the occurrences near water tank in the evening. She has also proved damages caused to her house and that her house was burnt. The witness has stated about the injury to her son and injury to Imam Saheb of the Masjid named Abdul Salam.

(d) FINDING OF PW-147 :

(d-1) This witness is an eye-witness of occurrences in the morning who proves presence and participation of Guddu, Bhavani and A-22 with weapons as members of the mob of the miscreants.

(d-2) The PW states on private firing near S.T. Workshop where Aabid died and Khalid was injured in firing.

(d-3) The PW is eyewitness of attack on Nurani, A-22,

deceased Guddu and Bhavani were present with weapons and were participating and were calling the mob towards Muslims.

(d-4) This witness is eye-witness of the noon occurrence as well as of the evening occurrence at the water tank.

(d-5) She is an eye-witness of injury to Imam Saheb of the Masjid and her daughter Vinus by stone-pelting.

(d-6) Her dwelling house was looted and burnt by members of the mob.

(d-7) Kausharbanu was dragged by Guddu, Bhavani, Suresh and his friends in the evening occurrence as proved beyond reasonable doubt.

28. PW-150 :

(a) The gist of the examination in chief of the PW is as under :

"I stayed at Hussain Nagar for about 15 years. In the morning I learnt and thereafter, I saw that there were violent mobs, who were looting, breaking everything into pieces, pelting stones on the Nurani, Nurani was being torched, firing took place, teargas shells were bursted, I saw Bhavani, A-22, 26 & 42 at Jawan Nagar corner in this mob.

At about 6:00 or 6:30 p.m. at the corner of Jawan Nagar I saw the mob wherein outraging modesty of the mother and sister of Nagina was done by the four accused.

My house and the house of my brother was completely destroyed, looted, panchnama were drawn".

Could not identify A-22, but knows Bhavani, A-26 & A-42.

(b) CROSS EXAMINATION OF PW-150 :

(b-1) The uniform mechanical sentence of the SIT was confirmed.

(b-2) Para 29 to 49, 106 to 108, 120 etc. are related to the statements of the year 2002 which are not relied upon.

(b-3) Para 50 to 61, 63, 64,70, 85 to 90, 93 to 103 etc. are on topography from residence of the PW to his service place.

(b-4) Para 65, 103 etc. are related to prior acquaintance with the accused. Hence not holding T.I. Parade is not significant.

(b-5) Para 122 is related to application to SIT.

The above points from (b-1) to (b-5) have already been dealt with at Part-2 of the judgment.

(b-6) Para 71, 72 etc. are not material contradiction of the SIT, incident of firing, morning and evening occurrences stand proved.

(b-7) Para 93 to 103 are to challenge the probability of the occurrence deposed by the witness but, the same has not been found impressive when at para 109 onwards, the opportunity of observation to the PW and possibility for the same stands quite probable.

(b-8) It is true that A-22 could not be identified by the witness, but if para 65 to 103 are perused, it is clear that the witness knows the accused quite well, both of them at that time were admittedly of the same area, before 8 years of the deposition the witness has left the area hence, it is very natural that the confidence of the witness may shake at time which is natural being little conscious in the Court, but since the A-22 was not identified and no TIP was held, it is just and proper to grant benefit of doubt to A-22.

(b-9) The incident of outraging the modesty of sister and mother of Nagina was seen by the PW and it was told in SIT (para 18, 109 & 110) but, nothing gets revealed during investigation. A-22 has not been identified. The word used by the PW, in fact, proves the ingredient of Section 354 beyond reasonable doubt. Nagina or any other family members of Nagina should have been examined. It needs a note here that, many occurrences have indeed happened, many of it came on books, many did not. Many complaints which were not further persuaded were even not investigated hence, it would be too much to say that the incidents narrated by the PW have never occurred. it is sufficient to say that the occurrence narrated by the PW is believed to have happened or not. This occurrence does not involve any of the accused being tried, it has been told in SIT and there is nothing to doubt the version or to disbelieve

the occurrence. The PW hs no reason to lie. It is held to have been occurred with a finding that it does not involve any of the accused.

(b-10) Para 505 onwards of the deposition of PW 327 does not reveal any material contradiction or omission and that, verbatim word to word copy of the statement is not natural in the deposition, hence nothing substantial has been brought on record to doubt the witness.

(b-11) No reasonable doubt exists about presence and participation of A-26, A-42 and Bhavani in the morning occurrence.

(c) FINDING OF PW-150 :

(c-1) The presence and participation of Bhavani, A-26 and 42 in the morning incident stands proved beyond all reasonable doubt.

(c-2) A-22 is granted benefit of doubt qua this PW.

(c-3) The occurrence of outraging modesty of mother and sister of Nagina in the evening occurrence does stand proved beyond all reasonable doubt. None of the accused is held to have been involved in the crime.

(c-4) PW suffered damages at his house as stands proved to have occurred on the date of the incident.

29. PW-157 :

(a) The gist of the examination in chief of the PW is as under :

"I stay at Hussain Nagar since last 20 years. My shop of mattresses was looted and burnt in the riot of the year 2002.

At about 9:30 a.m. I saw a mob around Nurani, the shops were being broken and burnt, the dwelling houses were burnt, property was shattered into pieces, stone pelting was done at Nurani.

The mob from Krishna Nagar, Naroda etc. came with weapons like swords, scythes, iron rods, pipes etc. stone pelting on Muslims was on going.

In the mobs Guddu, A-22, A-44 and A-62 were there with weapons etc.

At about 12:00 or 12:30 noon police firing took place wherein the Muslims were injured and afraid.

Seeing all these, we left the Chawl locking the house along with family from one lane to another lane, at about 4:30 p.m. a mob with weapons came from Uday Gas side who all were pelting stones on us, I saw Guddu, Suresh, Bipin and Kirpal Singh going on the terrace of Tiniya.

At about 5:30 p.m. went to house of Umarddin Mansuri to save our lives, from there, we were taken to Camp.

In the riot dwelling house and shops were looted and burnt.”

(b) CROSS EXAMINATION OF PW-157 :

(b-1) Para 28 to 34, 37 to 39 and 50 are based on topography.

(b-2) Para 48 is related to the uniform mechanical part of statement in the SIT.

(b-3) Para 54 to 60 are related to the printed complaint.

(b-4) Para 63 to 70 are on application given to SIT.

(b-5) Para 71 to 76, 78 to 81, 83, 84, 88, 90, 92, 93 are related to the statement of the year 2002.

The above points (b-1) to (b-5) have been dealt with at Part-2 of this judgment.

(b-6) Para 42 proves that the mob from Naroda and Krishna Nagar were pelting stones on Nurani and were torching Nurani.

(b-7) Para 44 relates to support, possibility of presence of A-52 as uniformed lady police at Nurani Masjid on that day.

(b-8) Para 46 shows that Guddu was seen by the witness in the morning as well as in the evening incident and A-44 and

A-22 were seen with Guddu in the morning and others at ST Workshop. The three were also seen at the terrace of Tiiniya in the evening.

PW 327 has stated that the witness has not stated on presence of any of the accused in the evening incident, hence, since it is not mentioned in the SIT statement, this version of the testimony becomes unsafe to be accepted and the possibility of mistaken presentation cannot be ruled out, hence, the accused whose names have been given for the evening occurrence need to be granted benefit, hence through this witness only presence and participation of the accused in the morning occurrence stands proved. However, the happening of evening occurrence is not doubted.

(b-9) Para 52 is on damages to have suffered by the witness.

(b-10) Several PWs have stated that there was no divider on the national highway road but numerous like this witness (at para 104) have also stated that there was divider on the road. This is important with reference to the fact that many of the witnesses have stated that some of the accused were sitting on the divider and were taking some liquid and snacks packets distributed to all the rioters on that day.

(b-11) At the note of para 84 it is mentioned that, right in the year 2002 itself the witness has given name of the accused, their addresses, their occupations etc. This shows that witness is a witness of truth and of consistency in the case, when police has written what he has stated.

(b-12) If the deposition of PW 327 is seen, it is clear that at para 536, the I.O. has clarified about the similar version in different words, at para 539, 545 and 546, the immaterial words in the cross have been highlighted.

(b-13) From para 542 in the main statement dated 2/6/08, the witness states that the PW has not mentioned A-62 as far as the presence at Nurani Masjid in the morning is concerned, but the witness clarifies, for the morning incident only, of having seen A-62 at Chetandas-ni Chali is clear. This shows that as far as the occurrence of Nurani Masjid is concerned A-62, can get benefit, but then, at the same time, he is at Chetandas-ni Chali. Nurani Masjid and Chetandas-ni chali are very close to one another hence, in any case the presence of A-62 in the morning occurrence, may be at Chetandas-ni Chali, stands proved.

(b-14) At para 538 the explanation rendered by the PW before the I.O. is reproduced which is natural and inspiring confidence of the Court, hence the witness who states the names of the accused later also should be believed as he is found natural and credible.

The other points have been dealt with in the order below Exh.2558 and since, they are not necessary to be discussed here also, their discussion is avoided.

(c) FINDING OF PW-157 :

(c-1) Presence and participation of Guddu, A-22, A-44, A-62 in the morning occurrence stands proved beyond all

reasonable doubts.

(c-2) The occurrences seen by the witness of the evening stands proved but presence or participation of the accused does not get proved beyond reasonable doubt as in the statement of SIT the name of any of the accused have not been given by the PW for the evening occurrence.

(c-3) Looting at dwelling house and shop of the witness stands proved to have occurred on the date of the occurrence beyond reasonable doubt. (Damages)

30. PW-158 :

(a) The gist of the examination in chief of the PW is as under :

The witness was resident of Patiya for about 38 years, after 09:00 a.m. or so, he learnt about the disturbances and had informed Hajarabibi alias Jadi Khala, he heard the screaming of 'kill-cut', the noises of bursting of the gas cylinders, he saw it from the terrace, he saw Nurani Masjid, slogans and shouting of 'cut, kill miya' was going on, the mob of Krishna Nagar was with weapons, which was pelting stones, Masjid was attacked by the mob, Abid and Khalid were hurt in firing, he heard that the mob has unduly entered at Jawan Nagar, Hussain Nagar etc. and is burning the people alive, he hid himself in one house of Jawan Nagar, the mob started coming there, he took shelter at house of Gauri Appa, everyone was frightened, the PW went to Gangotri from the terrace of Gauri Appa along with other Muslims at about 1:30 p.m.

At Gangotri, one huge shed of factory was there, they were hiding in that shade, shut the shutter half, been there upto 5:00 or 5:30 p.m.

They were told to come out from the shutter as arrangement for their safety was done, they all Muslims went to Gopinath, there was no arrangement for them but a big mob with weapons and shouting slogans was marching towards them, they came across the mob of the people of Gopinath and Gangotri societies near the water tank where they were cordoned, the mob had weapons at this place, they have beaten them and thrown stones on them, they were attacked by the people of the mob, wherein, in the mob, the persons from Gopinath and Gangotri societies and even others were there.

Here several people were cut and killed like entire family of Kudratbibi, Jadi khala, her two daughters-in-law, family of the PW, family of Kausharbanu, the family of maternal aunt of Kausharbanu, brother-in-law Salam of Gauri Appa etc.

At this time, his wife Zarina, daughter Fauzia, cousin Abdul Aziz, Haroon, Yunus, wife of Yunus jumped the wall, they were cordoned by the people, his wife was dragged by four men, she was attacked, her left hand was cut off by sword, her right hand was attacked by sword, her head was injured by sword, she was given hockey blow in her leg, her clothes were being pulled and torn off, not a single cloth remained on her body, she was made naked.

Even at the water tank, there was screaming of 'kill-

cut', all the men of the mob have attacked different persons with the weapons in their hands, four women of the society came there who were giving kerosene to the men of the mob and those women were telling that 'kill these people and then burn them', he knew the four women since they were purchasing bakery products which he used to sell.

Even he was also battered by acid bottles on his right hand, flesh came out from his right hand, he was also injured, he had also sustained injury on his hand, hip and head, the clamours of only 'save, save and save' were heard, the mob has killed his mother Abedabibi, sister Saidabanu, daughter of sister Saida - Gulnaaz, Jadi Khala, Kudratbibi, their family members by pouring kerosene and burning them.

At the water tank, Kudratbibi was burnt too much and then she died at Civil, the mother of this PW Abedabibi, his niece Gulnaaz, son of Kudratbibi Shabbir, mother of Kausharbanu, maternal aunt of Kausharbanu, pregnant Kausharbanu, daughter of Farzana named as Farhana, Salam brother-in-law of Gauri Appa, Jadi Khala, two grandsons of Jadi Khala, all died on the spot whereas, Kudratbibi and his sister Saidabanu died in the hospital.

The witness sates that, two sons of Abdul Aziz viz. Wasim and Salim were lying injured on the spot, at this time, a woman came who dragged Wasim and Salim and took them on the water tank and from there threw the two in the burning fire, who died there.

This occurrence of water tank took place before 7:00

p.m. when there was light, the witness was injured there, he knows the accused involved in the crime.

The PW, Farzana, Maharoof, son and daughter of Maharoof, daughter Reshma of Farzana, Bibibanu, his daughter Parveen, Sufiya and Sabera both daughters-in-law of Jadi Khala, Sabera and his sister Saidabanu were lying there in an injured condition. Out of them, Farzana was half naked and sister Saida and Sabera were completely naked, his pant was also torn.

At this time, mother of PW, Jadi Khala were screaming out of pain, the surrounding children were also screaming, his mother, until her last breath kept, on reciting his name "Naeem - Naeem" whereas Jadi Khala kept on speaking "Yah Allah, Yah Allah", there was tremendous fire all around.

They all were lying at the site in almost dead condition, then after, after a good amount of time police came, they were very much frightened and thought that someone has come to kill them. But the police was there who abused them too much, kicked their bodies, asked them "who survives", he mustered courage to say that he did survive, they were counseled to lie down as were lying, they told them that they would bring a big vehicle for them, they brought some vehicle, misbehaved with them, they helped each other and reached upto the vehicle, they were advised to hide themselves and ultimately they were taken to Civil Hospital, where they were treated though not satisfactorily but, they were treated.

They learnt about survivals of their relatives and met each other, treatment of most of the relatives was on going, his wife had 56 stitches, she was operated in front of them. The witness felt that their house, their world were all ruined, he added that "even today I get knee jerks and I am shaken, upon remembering, I feel I am very upset and will undergo brain hemorrhage on remembering the occurrence of that day."

His wife told him about the occurrence with her, they were so helpless that they had to shut their mouths, they were giving statement but, were not knowing as to what they were saying and what they were missing, the PW could not identify the four who dragged his wife, and stated that even on that day, he knew all those involved in the crime.

The witness has identified only A-30 as the person who was committing violence on the date of the occurrence at the water tank.

(b) CROSS-EXAMINATION OF PW-158 :

(b-1) Paragraph 141 is about the uniform mechanical statement used by the SIT of "What is written in the previous statement is all correct", which can hardly be genuine as discussed at Part-2 of the judgment.

(b-2) Paragraphs 77 to 85, 95, 97, 98 to 107, 111, 113, 114, 116 to 118, 121, 123, 124, 128, 130, 175 to 204 are all related to the statement of the year 2002.

(b-3) Paragraphs 69 and 131 to 138 are related to

application at SIT.

(b-4) Paragraphs 143 to 149 are related to topography. It is not material indeed. It no way disapproves the occurrence.

(b-5) Paragraphs 86 to 90, 93, 94 and 96 are on D.D.

The above points from (b-1) to (b-5) have been dealt with at Part-2 of the judgment which need no repetition.

(b-6) It stands revealed that the house of Gauri Appa was left by Kudratbibi, Hajrabibi, Kausharbanu and the witness together, and their families were not separated till the water tank occurrence.

(b-7) It is also revealed that the witness had no courage to say about the occurrence to anyone including at the Hospital. This is quite natural.

(b-8) The location of the water tank has emerged at paragraph 52 of the cross where three mobs were together, burning rags, kerosene, petrol, etc. were thrown from all around and several people were burnt there.

Even the death of Jadi Khala and death of Kausharbanu who was pregnant was caused near the Water Tank, the occurrence of Jadi Khala, family of Kausharbanu, family members of the witness, to have taken place at the water tank, stands established and no rebuttal whatsoever has been offered to the prosecution case as far as death of numerous persons mentioned by the witness in the said

occurrence was concerned.

(b-9) No notable or material omission from the SIT version has been focused, the so-called contradiction is missing one word here or there, the meaning of which has remained intact at the statement as well as at the testimony.

Certain spontaneous communications of the witness with the Court cannot be termed to be contradiction, it is rather corresponding to the main occurrence.

(b-10) The PW mentioned many number of accused, but has identified A-30 in the Court as a person who has done cutting and killing at the site which has remained consistent with paragraph 36.

In the opinion of this Court, the witness is an injured witness, he is an eyewitness of numerous deaths and injuries to numerous persons, A-30 resides in the society where the PW admittedly goes everyday for selling the bakery products, the attempt of the witness is nowhere to falsely involve any person, he seems to be a man of truth and telling what has been seen by him, when he did not see the persons who were tormentors of the crime, in the dock, he frankly conveyed it to the Court. Moreover, A-30 resides in Gangotri Society. The PW states that the accused involved in the crimes resides in this society (Para - 13) which all, tally with one another. From the entire demeanour and overall impression of the PW, this Court is of the firm opinion that he correctly involves A-30 in the crime, there is no omission or contradiction noticed in the deposition of PW 327 about identity of A-30, at paragraph 174, the witness

admits that he has not given name of the accused even at Hon'ble Nanavaty Commission, paragraph 161 is an admission that the name of four Marathis and four women involved in the crime have not been introduced to the SIT, their names and addresses were not given by the witness, the attempt of the SIT to bring the accused to the book was very much on the record, but it seems that the witness could not help the SIT. The over all impression of the witness is of a truthful man who is an eye-witness of numerous ghastly offences committed at the site of the water tank in the evening, there is absolutely no material on record to disbelieve the witness, hence it is clear that A-30 was in the mob who is also admittedly Marathi and was doing cutting and killing at the water tank occurrence, as a member of the mob there.

(b-11) At paragraph 218, the witness has supported the testimony of PW 135 by saying that in their lane/chawl, if something is happening in one house, it can be seen from any other house of the chawl and more particularly, the opposite house of the chawl.

(b-12) This Court is impressed by the inherent truthfulness and fairness of the PW. He has no reason to falsely involve A-30. The reference given by him in his version satisfactorily and undoubtedly, is found to have been given of A-30 and none else.

(c) FINDING OF PW-158 :

(c-1) Through this witness, the occurrence of morning, noon and evening on the date, time and place stands proved wherein the presence and participation of A-30 in the evening

viz. the water tank occurrence stands proved beyond all reasonable doubt.

(c-2) The homicidal deaths of the following persons at the water tank occurrence by cutting, killing, torching them, at the water tank site itself on the date, time, stands established.

(c-2.1)

(1) Mother of the witness, Abedabibi
(2) Niece of the witness, Gulnaz (daughter of Saidabanu)
(3) Neighbour of the witness, Shabbir, (son of Kudratbibi)
(4) Neighbour of the witness, Jadi Khala,
(5) Neighbour of the witness, Kausharbanu, (the pregnant woman)
(6) Mother of the said Kausharbanu,
(7) Maternal aunt of the said Kausharbanu,
(8) Farhana, daughter of Farzana,
(9) Salam, brother-in-law of Gauri Appa,
(10) Wasim, son of Abdul Aziz,
(11) Salim, son of Abdul Aziz.

(c-2.2) The following persons had died during their treatment at the Civil Hospital after sustaining fatal injury at the site of the Water Tank on the date and time in the water tank occurrence.

(12) Sister of the witness, Saidabanu,
(13) Neighbour of the witness, Kudratbibi.

(c-2.3) The following persons have been proved to have

sustained simple to grievous injuries in the occurrence of water tank, at the water tank, on the date and time of the offence.

(1) PW No.158, Naimuddin himself.
(2) Wife of PW 158, Zarina (PW-205),
(3) Farzana,
(4) Daughter Reshma of said Farzana
(5) Maharoof,
(6) Son of Maharoof,
(7) Daughter of Maharoof,
(8) Bibibanu,
(9) Parveenbanu, daughter of said Bibibanu,
(10) Sufiya, daughter-in-law of Jadi Khala,
(11) Shabana, daughter-in-law of Jadi Khala,
(12) Sabera.

In all, 13 homicidal deaths and injuries of 12 injured persons stands proved.

(c-2.4) The offences and occurrences of outraging the modesty of following women stands proved with a finding that none of the accused being tried are held to have been involved in the crime.

(1) Farzanabanu,
(2) Saidabanu,
(3) Saberabanu,
(4) Zarina.

31. PW-162 :

(a) The gist of the examination in chief of the PW is as under :

"I resided at Jawan Nagar with my family right from 1985. At about 9:00 to 10:00 a.m. in the pitfall of Jawan Nagar I saw the Hindu mobs with weapons like sword, pipe, kerosene container, scythe who were shouting slogans of 'kill the Miyans'. The workers at the ST Corporation were also doing stone pelting, thus from the Jawan Nagar khada as well as the ST workshop also stone pelting was going, police firing took place there.

My brother Jumman was injured by stone on his face who was treated at camp at about 4:00 p.m., the gas cylinder from Uday Gas were taken to burst it in the Muslim houses.

At about 7:00 or 7:30 we went to Gangotri at one house, we were tempted to come out where I saw a mob where I saw Bhavani, Guddu and A-22 with weapons and Kerosene tin. Those who came into temptation to go were badly attacked by the mobs, I have heard the screamings of "save-save and save the chastity of women, women and children were cut and burnt there near Gangotri Society where my maternal brother Sharif and Siddique were killed.

Panchnama for the damages at the house was also drawn.

(b) CROSS EXAMINATION OF PW-162 :

(b-1) At para 21 to 23 questions on topography were

asked which have been dealt with.

(b-2) Para 34 to 39, 41, 43 and 48 are related to the statement of the year 2002.

(b-3) Para 48 to 71 is related to affidavit of Supreme Court.

(b-4) Para 73 is related to the uniform sentence in the SIT statement.

The above points (b-1) to (b-4) are on the topic which have already been discussed at Part-2 of this judgment.

(b-5) Para 24 is to highlight improbability but it is held to be not a successful attempt as there were mobs of thousand of the persons all around.

(b-6) Para 74 and 75 shows fairness and reliability of the PW where he absolves for whom he has no personal knowledge.

(b-7) From the statement of the year 2002, the address of the witness has been shown to have been mentioned at lane No.11 of Jawan Nagar whereas, it is almost undisputed condition that Jawan Nagar had four lanes whereas Hussain Nagar had about 9 lanes. This is also an addition to the series of illustration the kind of the previous investigation was.

(b-8) It is true that PW 327 admits that the witness has stated before him that his family members have not sustained

any injury, but when the witness states that his brother has sustained injury it cannot be believe that he is speaking untruth as firstly, this is not material omission, he does not involve any accused for the injury to his brother and thirdly, the possibility is also that, that the question of the investigating agency or the reply of the witness could be in the narrow sense of family viz. wife and children. There is nothing to disbelieve this witness.

(b-9) It is true that at para 564 of the testimony of PW 327 the place of the occurrence has stated to *Khancha* and the time is stated as 5:30 p.m. by the witness before the SIT, but the testimony before this Court of the incident of Gangotri to have taken place at about 7:00 p.m. shows that witness is very natural as the rustic kind of witnesses have no much time sense. It is almost undisputed that the site you call it water tank, you call it *khancha* or you call it between Gopinath and Gangotri society or you call it the only site of evening massacre then these are all one and the same. It is therefore held that the witness is referring same occurrence in the statement as well as in the deposition. There is no contradictory version.

(b-10) Like Exh.1151 the panchnamas for the damages of the house of the victims have been taken on record at the instance of defence which all in fact strengthen the prosecution case of the victims to have sustained loss and damages of lacs of rupees in this communal riot and that dwelling houses, shops, business places and even roots of the individuals have been totally ruined.

(b-11) As far as allegation of chastity of woman are

concerned it is without any name of the victim and are too general.

(c) FINDING OF PW-162 :

(c-1) Through this witness the morning and noon occurrences stands proved.

The brother of the witness named Jumman was injured in the noon occurrence.

(c-2) The presence and participation of Bhavani, Guddu and A-22 stands proved beyond all reasonable doubt in the evening occurrence where

(i) Women and children were cut and burnt.

(ii) Where occurrence of death of Sharif and Siddique took place.

(iii) Allegation of outraging of modesty of women is too general to conclude.

(iv) The dwelling house of the witness was damaged.

32. PW-167 :

(a) The gist of the examination in chief of the PW is as under :

"I was residing at Hussain Nagar for about 25 years, while near the public water tap at about 9:00 a.m. I saw the Hindu mob coming from Natraj, Mahajania Vaas and Krishna Nagar who all had weapons like pipe, sword, scythe, who were doing stone pelting, giving slogans like cut Miyas, burn Miyas, kick them out and kill them etc.

The firing and bursting of teargas shells was on. Peeru had sustained injury in firing, I went to lift him up, at this time I have sustained bullet injury which bullet came from public, Abid, Majid, Khalid etc. were injured in firing, Abid died on the spot, the firing was from police as well as from mob, scuffling was on going, we ran away, went to terrace, been there upto 1:30 of night.

I saw A-41 in the mob from Natraj who was shouting slogan cut the Miyas, kill the Miyas, do not leave them alive.

I saw A-22 in the mob from MahajaniyaVas who had sword in his hand, who was telling 'kill the Musalman, cut them, burn them', they were stone pelting at Nurani and the surrounding shops, cabins etc.

I saw Lakha (A-34) who had trident, who was in the mob of Krishna Nagar and who was shouting kill the Miya, burn the Miya, loot them, do not leave them.

On asking the religion, the house of Nurabhai was left without looting as his mother projected herself to be Hindu.

I was given bandage by my father.

There was cabin of Pan at the second lane of Hussain Nagar which was run by Modin having Polio in his leg, he was burnt alive, his screaming at about 1:30 p.m. of "Save-Save" were over heard by us at terrace, his dead body was even seen by me at night when we were going in the police van to camp.

The mobs on the way while we were going to camp were trying to burn and stop us but the police took out the vehicle by firing in the air but there was stone pelting by mob.

My brother Gulam Rasul had sustained injury in the occurrence who was treated at Camp.

There was looting at my house, I can identify A-22, A-34 and A-41".

(b) CROSS EXAMINATION OF PW-167 :

(b-1) Para 35, 36 and 102 shows that the witness has seen A-22, A-34 and A-41 at the site in the morning.

(b-2) At para 37 the witness admits that A-41 did not have weapon at that time and the witness has not seen any of the accused beating any person. The above admission does not take away the allegations of stone pelting by the members of the mob including the three, the provoking slogan shouting, the looting of the houses all by the mob including the three and even the fact that numerous PWs are also telling all such

activities by the mob assembled in the morning. Nothing rebuts all the above.

(b-3) This witness has also admitted that even the Muslims have done stone pelting to Hindus. But this Court fails to understand "what of that" when the answer to the attempt is a lemon as no crime justifies another crime. Moreover, it is crystal clear on record that the Muslims in the initial period, as anyone would do, have resisted the stone pelting but then, having understood their inability they ran away, but the Muslims had no weapons, and then Hindus have gone far beyond the stone pelting to an extent that numerous Muslims were seriously injured and numerous Muslims were done away in the riot.

(b-4) At para 572 of PW 327 it has revealed that this PW has not given any complaint to the SIT against in the previous statement of 2002 even though what was stated by him was not taken down by the previous investigator.

It is true that the witness might not have made such grievances before the SIT but then can the court forget it that to be able to file such complaints the witnesses must be awaken, right conscious, educated and should have knowledge as to what was written by the previous investigator, but the kind of the witnesses this case has seen, such situation of raising complaint is not possible in one witness out of one thousand witnesses.

(**b-5)** The cross on the topography would hardly yield any fruit as the topography is now very clearly on record and no

fruitful purposes would be served bringing on record opinions of different PW which does not match with the hard reality.

(b-6) Paragraphs-67, 68 and 98 are related to the fact by which this Court draws inference of prior acquaintance between the witness and A-22, 34 and 41. It is more so when the witness is an undisputed resident of the area for the last 25 years. He has studied upto only 4th standard hence, his testimony has to be accordingly appreciated.

(b-7) The witness himself is an injured person by the fire arm in the morning occurrence. He puts up a brilliant probability through para-9, 11 & 51 of private firing on the date, on the time and at the site.

(b-8) The witness has correctly identified all the three accused. The PW is found very reliable who proves the presence and participation of A-22, A-34 and A-41 very satisfactorily.

(c) FINDING OF PW-167 :

(c-1) This witness supports and corroborates the occurrence of burning and killing of Moin/Modin, the boy who had polio, by the mob in noon occurrence.

(c-2) The witness proves his own bullet injury and treatment taken by him. He proves that even his brother Gulam Rasul was injured who took treatment at the camp.

(c-3) This witness puts on record possibility and

probability of private firing in the morning occurrence.

(c-4) The witness proves presence and participation of A-22, A-34, A-41 in the morning occurrences.

33. PW-168 :

(a) The gist of the examination in chief of the PW is as under :

"I am residing in the area since 25 years. On that day, at about 9:30 am or so, saw the mobs who were throwing stones and filled-in glass bottles, in the mob I saw Guddu, Bhavani and Suresh Langda."

(b) CROSS EXAMINATION OF PW-168 :

(b-1) The cross on the topography creates no doubt.

(b-2) It is true that the witness admits that she has not given first name of Suresh in her previous statement, but it is clear on seeing para 21 & 22 that there is description with identity sign of A-22 and the address of all the three named accused, hence the identity of the three is not doubtful in case of this witness.

(b-3) Para 23 is on not holding T.I. Parade by the previous investigator, but then, the witness gives a reply which speaks for itself for her case as well as for the case of any of the PW. She states that, 'had I been taken to identify, I would have identified.' It is needless to add that the lacunas, defaults or

inept investigation can never be a ground for benefit of doubt unless it is shown that the accused is prejudiced in any manner. In the instant case, A-22 has not been identified, no TIP, instead of A-22, A-50 was identified hence, there is a chance of mistaken reference of the name of A-22 hence, benefit to A-22 is justice qua this PW.

(c) FINDING OF PW-168:

(c-1) The presence and participation of Guddu and Bhavani stands proved beyond all reasonable doubt in the morning occurrence.

(c-2) A-22 is granted benefit of doubt qua the PW.

34. PW-169 :

(a) The witness states that she is a resident of the area since last 15 years with her family, and her parents are residing for about 50 years in the area. She seems to have seen the morning occurrence from the corner of ST Workshop, after about 9.00 a.m. The contents of all those who have seen the morning occurrence matches with her contents, she is eye-witness of injury to Salimbhai, firing, burning all around, the stone pelting etc. injury to daughter Asma, to her brother, her sister-in-law etc. and even she herself was also injured. Out of fear and to save everyone went backside, saw from the terrace of Gangotri, screaming, burning all around was common.

In the mobs, she saw sabotage, men with weapons, stone-pelting, torching by mobs, burning of Nurani, burning of

Patiya at all etc. etc. have been witnessed by the PW.

Saw A-44, A-22, Guddu and Bhavani in the mobs, went to camp, her house was burnt, looted and broken.

Did not identify A-22 & A-44 and expressed that since much time had passed, she may not be in a position to identify them.

(b) OBSERVATION OF THE COURT :

(b-1) The Court needs to keep in mind that the witness is a Muslim widow woman having a daughter aged 20 years who is studying in her college and the Muslim widow woman is doing a job at Anganwadi. Both the women are staying alone in their house.

(b-2) If paragraph 69 is read, it is becoming clear that she has seen all the four accused in the year 2002 and that even at that point of time, she has given their names. Even in this examination-in-chief also, she has given the names of the accused.

(b-3) Paragraph 27 is the expression of the witness wherein she has expressed that she was very much frightened even during the examination-in-chief. It seems that because of the above circumstances, the witness has her own limitations in identifying the accused, otherwise it is an admitted position that she was residing in the area right from her birth and the four accused, she has named are also well known in the area.

(b-4) At paragraph 28, it is becoming clear that she had an occasion to meet A-44 whose name she has even given in the statement in the year 2002 also. The witness has given the first name of A-44, she has replied in the cross-examination that she knew that at the time of occurrence, Bipin Auto Centre was there where at present Manan Auto Centre is situated. This reply and the over all facts and circumstances of the case, enables the Court to infer prior acquaintance, but as TIP is not held for the unidentified accused benefit to them.

(b-5) If the statement of the SIT is seen, as has been revealed in the testimony, she went to the terrace, has seen the named accused who were provoking the people were screaming and shouting and were noticed in the mob of miscreants. It is different that in the statement of the year 2002, she has stated the terrace of Gangotri, but in SIT, she has stated terrace of Gopinath which in the humble opinion of this Court is not contradiction at all. It seems to be slip of tongue or slip of pen. Moreover, the name of the society is not important whether the accused were identified in the SIT as well as in the year 2002 is very important and that reply is in affirmative considering which, the testimony of this witness proves the prosecution case against the four accused.

(c) CROSS-EXAMINATION OF PW-169 :

(c-1) Cross-examination on topography has already been dealt with at Part-2 of the Judgment.

(c-2) No contradiction is noticed and there is no material omission in the testimony of the witness comparing it with

either of the statements. This witness has proved injury of herself, injury of her daughter, injury of her brother and even injury of her sister-in-law.

(c-3) She has deposed that the men of the mobs were terrific and horrifying people, even today the witness is tremendously frightened when she remembers the occurrence.

(d) FINDING OF PW-169 :

(d-1) This witness has proved the prosecution case qua the morning occurrence burning Nurani, injury to Mustaq in firing, stone pelting and evening occurrence and she proves presence and participation of Guddu and Bhavani in both the mobs.

(d-2) A-22 & A-44 are granted benefit of doubt qua this PW.

(d-3) This witness has proved the occurrence of firing to have taken place in the morning.

(d-4) Injury to the PW by pipe and injury to daughter of PW was caused in the morning occurrence.

35. PW-170 :

(a) The gist of the examination in chief of the PW is as under :

The witness was residing at Hussain Nagar, at about

9.00 or 09:15 a.m., heard lot of hue & cry, went to the public water tap near S.T. Workshop, the mob of Hindus was coming from Natraj, shouting of 'Kill, cut', the men of the mob had sword, scythe, pipe etc. who were pelting stones.

In this mob, the witness has seen Bhavani, Guddu, Mungado (A-39), Hariya (A-10), Suresh (A-22), Bipin (A-44), who all were leading the mob, they brought the mob upto S.T. Workshop, the mob attacked near the houses of Nurani, burnt carts, cabins, houses near Nurani and attacked Nurani, the witness and others tried to save Nurani. Hindus were pelting stones, the police was firing and bursting teargas, bullet injury was caused to some of the Muslims, Muslim women went to seek help from the police, but were beaten by the police, the disturbances by the mob and the mischiefs by the mob were increasing, half of the mob went to Muslim chawls, half went to Nurani, in the mob at Nurani, the witness has seen A-10, A-39 and A-22, in the firing, somebody tried to shoot the PW, but another person was hit, the PW went home, took his family and went to S.R.P. Camp, Bhavani and Guddu have died.

This PW has identified A-10, A-22, A-39 and A-44.

(b) CROSS-EXAMINATION OF PW-170 :

(b-1) At paragraph 31, 32, 41 and 42, the questions are on statement of 2002. At paragraph 49, it was crossed that the witness had seen Bipin Auto Centre at Patiya (which was at that time of the occurrence).

(b-2) Except A-44, name, address of all the accused is

noted to have been recorded in the statement of of the year 2002. Reading this with the question mentioned at (b-1) above, it is clear that the witness was also knowing A-44 in the year 2002 which all collectively is capable to draw the inference of prior acquaintance of the witness with the accused.

With reference to the above observation, no meaning is served of the routine confrontation at paragraph 43 that the witness has no transaction of any nature with the accused.

(b-3) The fact that the named accused were leaders of the mob, does not stand rebutted.

(b-4) The fact that the witness himself was injured and had to undergo the treatment at the camp, stands proved.

(b-5) The voluntary statement at paragraph 36 clarifies with all strongness that on the date of the occurrence and at the time of the occurrence, burning rags were thrown from the S.T. Workshop.

All these, firmly prove the prosecution case.

(c) FINDING OF PW-170 :

(c-1) The witness is the eyewitness of the morning occurrence where firing took place wherein many Muslims were seriously injured and even died. This includes possibility of private firing.

(c-2) The witness was injured in the occurrence who was

given treatment at camp.

(c-3) The presence and participation of Bhavani, Guddu, A-10, A-22, A-39 and A-44 stands proved in the morning occurrence beyond all reasonable doubts.

36. PW-171 :

(a) The gist of the examination in chief of the PW is as under :

The witness is residing right from his birth at Kumbhaji chawl and was hawking his cart of omelet near Nurani Masjid. On the date of occurrence, the witness stated that when he came at about 10:00 a.m., he saw a huge crowd on the road which was ransacking carts, damaging the shops surrounding Nurani along with carts, cabins etc., the mob was giving slogans of 'Jay Shri Ram', the witness saw Guddu and Suresh in this mob, who were breaking the things into pieces, were provoking the men in the mob, Suresh had something like stick and Guddu had sword, the witness had suffered lot of damages in the occurrence.

A-22 was identified by this PW.

(b) CROSS-EXAMINATION OF PW-171 :

(b-1) The mob this PW had seen on that day, was spread over the road.

(b-2) Kumbhaji-ni-Chali is near S.T. Workshop.

(b-3) The witness is the eyewitness of the morning occurrence.

(b-4) The statement of the year 2002 has been confronted which in fact has been discussed, hence need not be repeated.

(b-5) It is clear from paragraph 22 that A-22 was seen in the mob of the miscreants who was known to the witness in 2002.

(b-6) Paragraph 23 suggest that the accused were at least seen by the witness.

(b-7) The suggestions at paragraph 25, are itself to the effect that even according to the defence, the witness has seen both the accused.

(b-8) The admission at paragraph 26 rules out false involvement.

(b-9) The witness is a complainant of I-C.R.No.188/02 dated 16/03/2002 wherein there is mention at F.I.R. Exh.313 of loss-damages form and complaint of the witness.

(c) FINDING OF PW-171:

(c-1) In all, the presence and participation of Guddu and A-22 in the morning incident stands proved beyond all reasonable doubts.

(c-2) The PW had suffered loss and damages at his house.

37. PW-172 :

(a) The gist of the examination in chief of the PW is as under :

The witness is a resident of the area since last 31 years with his family, he saw the incident of the morning at about 09:00 a.m. onwards wherein one mob came from Patiya and another from Krishna Nagar, the damage and destroy to the shops and torching to the shops was on going, the witness went to Jawan Nagar with family and remained there upto 07.00 p.m., he states on damages sustained at his dwelling house, he saw Guddu Chhara and A-1 in the mob of Krishna Nagar, he identifies A-1.

(b) CROSS-EXAMINATION OF PW-172 :

(b-1) The witness admits that he has not seen any occurrence after once he went to Jawan Nagar, but then it is not at all his case hence the significance of the cross remains a suspense.

(b-2) Paragraph 13 clarifies that in the statement itself, the witness has specified and clarified the names and residences of both the accused and he has seen them on that day.

(b-3) Paragraph 15 to 17, 19 and 20 relates to topography, paragraph 21 relates to S.T. Workshop which all have been

dealt with at Part-2 of the judgment.

There is nothing on record which creates any doubt about the truth in the version of the witness.

(c) FINDING OF PW-172 :

(c-1) The witness proves the presence and participation of A-1 and Guddu beyond all reasonable doubts in the morning occurrence who is eyewitness of the said occurrence.

38. PW-173 :

(a) The gist of the examination in chief of the PW is as under :

The witness resides at Patiya for about 21 years, the witness was called at old Masjid by the Police, he saw the people, shouting "run, run" and stone-pelting on Nurani, people were attacking Nurani and stone swere also being pelted on Muslim chawls, police was bursting teargas and the police firing was on going, the victim was injured in the occurrence and was treated at camp.

The witness went to Jawan Nagar, he saw people coming from the way of Uday Gas and were pelting stones, burning rags were thrown from the S.T. Workshop, he went to a street between Jawan Nagar and Gangotri, he met his wife and children, his daughter met him.

At this point of time, many persons of his chawl were

at the house of Tiwari (A-25) who is Conductor at Gangotri Society as this Tiwari was their former neighbour, at this place for long, the screaming of "Save, Save", noises of bursting the gas cylinders etc. were heard by this time, Tiwari came home who told us to go towards Naroda till then all Muslims were sitting in his house after he came, he told them to go to Naroda, hence the Muslims came out of their house, all went in different directions, the witness has identified A-25.

(b) CROSS-EXAMINATION OF PW-173 :

(b-1) Through the testimony, it has been revealed that the wife of his son, Shabnam died in the incident, his son had sustained injury, he has suffered damages.

(b-2) The uniform sentence of the SIT was highlighted, it stands revealed that the witness is the complainant of I-C.R.No.127/02 and has given printed complaint, all these have been dealt with at paragraph 31 to 37 and 41.

(b-3) Paragraph 43 to 46 and 50 is based on topography.

(b-4) Paragraph 52 is based on statement of 2002.

The above (b-2) to (b-4) have been discussed and dealt with at Part-2 of the judgment.

(b-5) At paragraph 53, the witness has been confronted on the aspect that he did not know name of any person in the mobs he has seen. This is attempted to be put up as defence of A-25 that A-25 was not seen in the mob, but it is to be

appreciated that it is not the case put up by this witness, he on the contrary says that they were in the house of A-25 as a former neighbour and not as a member of the mob. What the witness wanted to put up is that had they been not driven out by A-25 or had they not been given temptation of leaving his house to go to Naroda, many Muslims could have been saved. In nutshell, A-25 has not done anything by which his involvement in the crime may not be doubted. His identity is confirmed.

In fact, he (A-25) and Bhavani have been projected by many of the witnesses as wolf in sheep's cloth and depth of their notoriety is that they have always misguided the victims so as to throw them knowing it to be open death. In such cases, the witness is saying that till A-25 came in the house, they were allowed to be in the house is not a credit to A-25, it is rather revealing conduct of A-25 which is in connivance with all those accused who have expressly and actively committed the crime.

(c) FINDING OF PW-173 :

(c-1) The occurrence of the morning stands proved.

(c-2) Presence and participation of A-25 in the noon occurrence, stands proved beyond reasonable doubt.

(c-3) The damages sustained by the witness stands proved. The witness was treated at camp after sustaining injury.

(c-4) The witness proves the police firing in the morning

occurrence.

39. PW-174 :

(a) The gist of the examination in chief of the PW is as under :

He was residing with his family at Jawan Nagar at the time of incident, his eldest son Mr. Shakeel is missing, at about 9:00 or 9:15 a.m. he came to home and informed that there is disturbances outside hence he went out, there was stone pelting and disturbances.

He saw Dalpat, Bhavani, Guddu, A-22, A-41 and A-18 as leaders of the mob which mob was speaking kill the Miyas, Guddu had Sword, Suresh had scythe and trident, Manoj Videowala had revolver who was doing firing.

They were calling the mob inside and were telling that "cut, kill and burn miyas", he then went to Hussain Nagar and went at about 5:00 p.m. near Gayatri and Gangotri society (it should be Gopinath and Gangotri and as is clear from para 8 and 9 and the description this is related to the evening occurrence as in the morning occurrence it was all near Nurani and outside ST Workshop from noon onwards the mob has started entering into Muslim Chawls), Bhavani met at 5:00 p.m. who offered Khichadi (which according to the witness was not in good sense), my son came about 5:30 p.m., he then went to SRP Quarters, at about 7:30 or 7:45 p.m. he has over heard Dalpat, Bhavani, A-22 and A-41 talking and rejoicing their victory in the occurrence saying that 'all Muslims have been

done away', his son Farid and he were injured who were treated at camp, elder son Shakeel is not heard or seen from the date of the occurrence, there was damages suffered by the witness, he identifies Suresh and Manoj, Dalpat, Bhavani and Guddu had died. He has not identified A-18 nor did he even try to identify any other person then A-22 and A-41.

(b) CROSS EXAMINATION OF PW-174 :

(b-1) The panchnama of the house for damages has been drawn.

(b-2) At para 36, 37 & 48 the topography of the site has been asked, the driving license of the witness was taken while he was in the witness box and was verified by the defence, this adds to genuineness of the defence.

(b-3) In light of para 582 of PW 327, the I.O. it is admitted position that Muslims did the counter stone pelting but as has been discussed, that does not matter much, para 6 and 7 of the chief appears to be for the morning incident and para 8 and 9 is referring to evening incident, there is no contradiction believed by the Court to have been existed here.

(b-4) At para 38 the witness does not agree that all the attacks were done by the persons who had tied black cloth on their face, this shows the opportunity and chance of observation and identifying the accused.

(b-5) Para 72 is related to the usual paragraph commonly asked by the defence to rule out prior acquaintance with the

accused in addition to which it has been confirmed that A-41 and A-22 had neither enmity nor friendship with the witness, in the humble opinion of this court it is sufficient to hold that the chance of any false involvement of the accused is thoroughly ruled out by this.

(b-6) Para 74 clarifies that Bhavani, Guddu, Dalpat, A-22, A-18 and A-41 were leaders in the evening mob, this shows that the witness knows all the accused so very well that there is no chance of any mistaken identity.

A-18 is very popular person as has come on overall record of the case, but since was not identified benefit of doubt to him as, there is even no TIP.

(b-7) As far as para 72 is concerned the usual paragraph to rule out prior acquaintance has not at all been asked to the witness qua A-18.

(b-8) The witness has not only named A-18, but the Court could have understood if after making reasonable efforts the witness was not able to identify A-18, but that is not the case and to record this very conduct, this Court has written a note below para 20 which shows that before the witness went to the place where accused were sitting to identify the accused the witness has already determined not to identify A-18, this conduct is a speaking reason for not identifying A-18, but it is doubt not evidence. Noting that A-18 was not identified in the court it is held that A-18 is entitled to benefit of doubt.

(b-9) There does not seems to be any material omission at

para 7 and 15 etc. and in any case, in the SIT all description of evening occurrence has been properly and satisfactorily made.

PW 327 has correctly explained that the witness has given description of occurrences right from 9:30 to 5:00 p.m. or 5:30 p.m. This looks more natural and more probable as, as at para 53 it is clarified that the witness is an illiterate man, it is also clear that he is a rickshaw driver hence sophistication in verbal presentation and communication skill cannot be common to such witness, such rustic witness may not be smart enough to speak everything sequence wise, the only satisfaction is that there is no conclusive piece of cross to hold the description at para 8 and 9 to be for the morning occurrence only or for the evening occurrence only. Thus in nutshell, with limited ability such witness may have he has explained occurrences of throughout the day in the best possible manner.

(b-10) No omission improbablise the prosecution case put through this witness, hence the prosecution case helds to have been satisfactorily proved by this witness.

(b-11) At para 38 the suggestion shows that the accused who have attacked had weapons.

(b-12) Para 54 provides sufficient material by which it becomes clear that the elder son of the witness viz. Shakeel has neither been heard nor seen right from the date of the occurrence who needed to be presumed dead.

(c) FINDING OF PW-174 :

(c-1) A-41 was carrying revolver on that day, the possibility of private firing cannot be ruled out. This also tallies with many other witnesses including PW 52.

(c-2) The witness and his younger son Farid were injured in the occurrence and were treated at camp.

(c-3) Death of eldest son of the witness Shri Shakeel is presumed to have been caused in the occurrence beyond any doubt.

(c-4) The witness proves presence and participation of A-41, A-22, Dalpat, Bhavani and Guddu in the evening occurrence.

(c-5) A-41 was doing private firing. The PW has suffered damages at his house.

(c-6) A-18 is granted benefit of doubt qua the PW.

40. PW-175 :

(a) The gist of the examination in chief of the PW is as under :

The witness was residing in the area from birth, working as driver in AMTS, at about 9:00 or 09:30 a.m., mobs started coming from Krishna Nagar and opposite S.T. Workshop, the men of the mob were pelting stone on Muslim chawls, the Muslims were afraid, his family was sent to S.R.P.,

the mob became more violent, the people of mob had swords, pipes, scythes, sticks, etc., his father was hurt on his leg with teargas shell, he along his father and brother went to Gangotri at the house of A-25, at about 4:00 p.m., some of us went to terrace of Gangotri as more and more mobs started coming, on say of Tiwari, we had to leave his house, we went to S.R.P. Quarters at about 05:00 p.m.

At about 01:30 p.m., I saw in the mob A-44, Guddu, A-10, A-41 and A-22 when Bipin had sword, Bhavani and A-41 were leaders of the mob, A-22 and A-10 had pipes, the men of the mob were pelting stones, torching dwelling houses, brought inflammable liquid and kerosene tins and were torching. He states that "My printed complaint-application is at Exh.1207, some of the contents have not been stated by me which have been read and circled.

In the occurrence, there was damages in my house and my house was burnt, I know all those accused I have seen on that day in the mob, Guddu and Bhavani had passed away. "

The witness identified A-10, A-41, A-44 and A-22.

(b) CROSS-EXAMINATION OF PW-175 :

(b-1) The witness has stated that the printed application was written by police, the police did not read it over to him, he has signed at camp. He stated that, “on asking in the camp, I went, there was police to whom I have stated.”

(b-2) Paragraph 23, 24 and 25 wherein the witness is

asked about topography and other details at the time of the occurrence and about the occurrence are stated by the witness, which adds to the natural version of the witness.

(b-3) The replies at paragraph 27, 28 and 36 are about the facts as well as topography which strengthens the probability factor.

(b-4) Paragraph 29, 30, 32, 33, and 38 are related to statement of the year 2002, paragraph 35 is related to uniform mechanical sentence of the SIT which does not create any doubt which has been dealt with at Part-2 of the Judgment, hence need no repetition.

(b-5) Paragraph 41 shows the truthfulness and fairness of the witness, he does not seems to be inclined to falsely involve any of the accused in the crime.

Considering the above discussion, no doubt is created against the genuineness of the version of the witness.

(b-6) Paragraph 48 is proving clear prior acquaintance with A-44, no doubt is left out in the mind of any attempt of false involvement by the witness qua any of the accused.

(b-7) No contradiction or omission is noticed.

(b-8) It is true that the role of A-25 is not that of the accused, but then the special fact need a notice that A-25 and father of the witness were colleagues at AMTS, hence A-25 might have carved out exception for the witness himself, his

brother and his father, but this gesture of A-25 which is highly on the personal level cannot be given generalised effect so as to give him benefit of doubt where his positive involvement is proved by the respective witnesses. No doubt, this PW does not involve A-25 in the crime.

(c) FINDING OF PW-175 :

(c-1) The presence and participation of Guddu, Bhavani, A-10, A-41, A-44 and A-22 stands proved beyond all reasonable doubts in the noon occurrence at about 01:30 p.m.

(c-2) The witness proves the occurrence of the morning.

(c-3) The PW suffers damages in his house.

41. PW-177 :

(a) The gist of the examination-in-chief of the PW is as under :

"I reside at Gali No.4, Hussain Nagar with my family. At about 09:00 or 09:30 a.m., there was hue and cry in the chawls, since somebody told that 'mob has come', the people of our chawl went on road. I also went on road.

I saw mob coming from Natraj, Krishna Nagar with sword, pipe, hammer in their hands with saffron belt on their foreheads, mob of Sindhis from Patiya and mob of Chharas was coming from Natraj.

The men of the mob started attacking Nurani and shops and houses surrounding by burning it.

There was stone-pelting by the mob near Masjid. The Imam was hurt, which all I saw.

Seeing all these, I returned home to inform my husband who in turn ran on the road to see, I also followed him.

The mob has then attacked on our chawl at about 10:00 a.m., there was firing, bursting teargas shells and very forceful stone-pelting. About 5 to 6 persons were injured because of firing and even Abid died due to firing.

In the stone-pelting, my husband was also injured on leg and head, who was treated at camp, we returned at our home and were very much afraid, my husband told that we should hide somewhere by leaving the house as it is. Hence, I, my husband and our children went to house of Pinjara opposite my house and at about 12 noon, my brother, sisters also came there, where we found several Muslims.

At about 2:00 or 2:30 p.m., the mob started breaking of, burning and robbing and entered in our chawl, the mob entered in our chawl where the mob was headed by Shehzad, Ganpat and two Chhara women. These women were robbing. I saw Shehzad burning the house of Jayeda Aapa – the first house of our chawl.

After Shehzad burnt the house, the men of the mob

started roaming in our chawl. They knocked the door of the room where we were hidden, Shehzad told loudly that 'all the male sitting inside shall come out'. We were very much afraid, even my voice was choked.

From our room, Shehzad was replied by some woman that inside there were only women and children, then Shehzad said that 'give your children', the woman inside requested not to take the children, then Shehzad had replied that, “we will take this children on road and would burn them alive”, all the women inside started crying.

The men of the mob stood for some time, then while going away, they told that 'today you are not going to be saved or survived and if by chance, you are saved then go away to Pakistan'. Then after, we stayed there upto night.

On the way, I saw two dead bodies in burnt condition, out of which one dead body was of physically challenged boy, Modi.

We stayed at camp for about 6 to 7 months, my house was burnt and was damaged by the gas cylinder".

The PW identifies A-4, A-26, A-61 (Ramila) as A-56 (Gita), does not know A-56 (Gita). The mention is of two Chhara women.

(b) CROSS EXAMINATION OF PW-177 :

(b-1) The witness gives names of both the Chhara women

accused, hence as discussed at Part-2 of the judgment unless the identity inspires confidence of the Court it should not be easily acted upon.

PW 327 at para 591 refers the statements of the witness in SIT. It is clear that the witness has even not named the two Chhara women while the statement at the SIT and has merely stated that the witness did not know names of the two Chhara women accused and the witness was even not able to identify both the accused by seeing them also.

In light of the above testimony of the witness before the SIT the identity noted at para 17 of the two Chhara women which too is not of true and correct person, does not inspires confidence of the Court and the same needs to be doubted as both the women accused have not been mentioned by names but by general phrase 'two Chhara women', their names were not given in SIT statement hence they are entitled for reasonable benefit of doubt.

(b-2) Para 18 to 21 and 25 are on the topography and that as has already been discussed at Part-2 of the judgment the said is not significant to label the witness as liar.

(b-3) None of the question on probability has been replied in the manner because of which the occurrence becomes improbable on record.

(b-4) It is admitted position that in the year 1991 the sister of PW was burnt, there was quarrel between the brother of the PW and nephew of the A-4, but it does not seems to be

probable that for this reason anyone would falsely involve A-4 in the crime when nothing has been done by brother of the PW to the nephew of the accused. Firstly, there is no enmity between the witness and A-4 and secondly, if the witness wants to involve someone falsely she would not wait from 1991 to the date. On the contrary, this seems to be a case of prior acquaintance of the witness and A-4. Moreover, the witness has stated that her sister has burnt herself and A-4 has not done any negative role but he has only persuaded not to file the case for which there cannot be any enmity. This defence does not seems to be logical one.

(b-5) The position of the sitting arrangement of the witness is proved to be such wherein her opportunity to observe the accused is very clearly on the record.

(b-6) The damages at the house of the witness and injury of her husband in the occurrence and his treatment at the camp also stands proved.

(c) FINDING OF PW-177 :

(c-1) The morning occurrence, firing at that place stands proved beyond reasonable doubt.

(c-2) The house of the PW was burnt and damaged.

(c-3) The presence and participation of A-4 and A-26 stands proved in the noon occurrence at the Muslim Chawl of torching the houses of, threatened to lives of children of the Muslims (noon occurrence) beyond reasonable doubt.

(c-4) The dead body of the Moiuddin was seen by the witness at night who was a crippled boy.

(c-5) The two women accused viz. A-56 and A-61 are required to be given benefit of doubt qua this witness.

(c-6) The husband of the PW was injured in occurrence.

42. PW-179 :

(a) The gist of the examination-in-chief of the PW is as under :

"I am resident of Hussain Nagar, heard clamour that 'so many mobs are standing outside', I went out at the corner of the chawl, saw Hindu mobs coming from Krishna Nagar and Natraj along with husband, mobs came inside Nurani and were breaking carts, cabins and were scuffling with human beings, in the Masjid, gas cylinders were bursted, police did firing and bursted teargas, in firing, some Muslims were injured; went towards SRP, but returned home as were not permitted to go inside, saw mob from the way of Uday Gas Agency, the mob was shouting 'Kill, Cut, Burn', we ran away we then went to the terrace of Jawan Nagar.

At about 05:00 p.m., saw mobs coming from Maidan from the terrace wherein A-44 was there, the men of the mobs had scythe, swords, A-44 was provoking men of the mob and was showing the hideouts of the Muslims, we were on the terrace of Jawan Nagar, some of us had heart burning for the

behaviour of Bipinbhai (A-44), I also saw A-44 doing all these.

Burning tyres, rags etc. were thrown from S.T. Workshop on the Muslim chawls, the screamings of 'Kill, Cut' was heard while the mob was coming closer and closer, we went on the terrace of Gangotri, in the evening where other Muslims were there.

From the terrace, some of the persons were viewing downstairs who were restrained, the voice of Zarina came seeking water and saying that she is in difficulty and that her hand has been cut of (PW 205), I went down the terrace in search of water, there I found a tin with liquid perceiving it as water, I took the same which was kerosene.

I saw in the light of fire all around while coming down from the terrace at late night. In this light of fire, we also saw dead bodies while we were taken to camp, we had many difficulties on the road. My husband was injured in stone-pelting, who was treated at Camp. My house was destroyed and burnt.

Instead of A-44, the witness has identified A-17, stating that she has seen A-44 before about 8 to 9 years. In case of one another witness, that witness has also identified A-17 instead of A-44 wherein this Court has noticed the similarity in the outer appearance between the two coupled with the fact that this Court could observe it but in absence of TIP benefit to A-44.

(b) CROSS-EXAMINATION OF PW-179 :

(b-1) This Court is firmly believing that the witness was knowing A-44 very well at the time of the occurrence but it is probable for the witness to have mistake in the identity of A-44 as he has not identified him. Hence, it is held that A-44 is entitled to be granted benefit on that count.

Even the contents at paragraph 35, which came on the record at the instance of defence, it is for sure that the inference of prior acquaintance qua the witness can legitimately be drawn in the fact of the case.

(b-2) The statements of the year 2002 is the subject matter of cross at paragraph 28 to 34, 44, 45 and 47, which has already been discussed at Part-2 of this Judgment.

(b-3) Paragraph 41 is related to uniform mechanical sentence of the SIT.

(b-4) Paragraph 42 and 43 is to the effect that the witness is resident of the same locality, hence no doubt is left out about the genuineness in the earlier statement of the witness.

(b-5) There is no contradiction or omission with the statement of SIT.

In nutshell, the witness is credible.

(c) FINDING OF PW-179 :

(c-1) The presence and participation of A-44 in the

evening occurrence is granted benefit of doubt qua this PW.

(c-2) Damages suffered by the PW at his house.

(c-3) Husband of the PW was injured in the occurrence.

43. PW-180 :

(a) The gist of the examination in chief of the PW is as under :

The witness was resident of Hussain Nagar, he saw mobs from Krishna Nagar and Natraj with weapons, shouting "Kill, Kill", doing stone-pelting, in the mob, the witness saw A-22, who was identified.

(b) CROSS-EXAMINATION OF PW-180 :

(b-1) At paragraph 11 and 12, the witness has stated that police called him to record his statement and other than that, he had no occasion to go to police.

(b-2) The witness had made a grievance for injury by glass in the legs of his son while they were at camp, he clarifies at paragraph 13 itself that he did not state everything related to crime in the complaint/grievance/application for the injury to his son (in fact, it appears that this is not in routine sense of complaint as understood in Cr.P.C., it seems to be in sense of an application. It is therefore, clear that in such application except the injury, nothing more would be written which has reconfirmed at paragraph 14.)

(b-3) There is nothing on record by which the witness can be termed to have filed his complaint as is understood in Cr.P.C. Paragraph 14 if read with paragraph 11 and 12, the witness has no case that he has not given name of A-22 in his earlier statement before police which earlier statement was given.

(b-4) As confirmed from many of the witnesses, it is also confirmed from this witness that there was counter stone-pelting even by Muslims but as has been discussed at Part-2 of the Judgment, this makes no difference.

(b-5) At paragraph 18, the prior acquaintance of the witness with A-22 stands confirmed. There is no case of any contradiction or omission.

(c) FINDING OF PW-180 :

(c-1) The presence and participation of A-22 in the morning occurrence stands proved beyond all reasonable doubts.

44. PW-181 :

(a) The gist of the examination in chief of the PW is as under :

"I reside at Hussain Nagar, at about 9:00 or 9:15 in the morning I went to my job, at about 1:30 p.m. my employer told me to go home because of disturbances, at about 4:00 p.m. my employer dropped me on his scooter along with a colleague.

While going towards my home I have seen two dead bodies, my house was burning, my rickshaw was also burning, the mob was robbing and burning the houses, I saw Suresh (A-22) with a bacon in his hand, he was encouraging by shouting to do looting of houses of Muslim women, one of the burning dead body was of crippled son of Mullaji where there were so many persons, there was disturbances, they were running here and there, one man with big mustaches told that our children have been put inside the shutter by him, the people were being burnt outside which all I have heard through the clamour, I saw Guddu, Bhavani and A-22 looting.

With great difficulty I found out my family, my husband and three children - Farzana, Saira and Mohammedali, my daughter Noorjahan, son Shahrukh and son Shahjajan were not found, husband and another son were injured and were treated at camp.

When I, my husband and my younger brother Jainul Abedin went to Civil Hospital I met my daughter Shahjahan and son Shahrukh who both were burnt extensively and were being treated. From daughter Shahjahan I learnt about the death of my elder daughter Noorjahan whose burial receipt I am having, my sister-in-law Salia, her children - daughter Muskan and son Subhan had died in the occurrence.

Even I have suffered damages for my house".

The PW has A-22 and he states that Bhavani and Guddu had died.

(b) CROSS-EXAMINATION OF PW-181 :

(b-1) Exh.1253 is the application of SIT.

(b-2) The witness has been confronted on the way to go to her job. This Court is of the opinion that description of way for her place of job cannot be equated with the occurrence as in case of such occurrence mind becomes more active, more sharp and more receptive, whereas other activities are routine activities.

(b-3) From the cross examination of the witness it becomes very clear that the witness has seen mobs, coming from Kuber Nagar, the mobs near Masjid, the mobs to have unduly entered in the Chawls, which all proves prosecution case.

(b-4) There is absolutely nothing on record by which the version of the witness can be doubted. At para 48 and at para 49 the witness has accepted the suggestion that Bipin Auto was near Ice factory, on that day on the road shops, carts and cabins were all burning.

(b-5) At para 51 the witness has admitted that the mob was very big and she has seen and heard the men of the mob to have been shouting and that on that day the disturbance was terrific.

(b-6) At para 52, the suggestion shows that the men of the mob were all looting and were burning dwelling houses.

What is mentioned at points No.(b-4) and (b-5) is based on the suggestions of defence. These facts proves that occurrence happened on that day, at that site and that place as been proved by many PWs. It is only to be mentioned that the suggestion of the defence is self speaking.

(b-7) The witness is aware about the entire occurrence of water tank viz. *khancha*, where according to her, her two daughters and one son viz. Noorjahan, Shahjahan and Shahrukh were parted and were tremendously burnt.

(b-8) Para 56 shows the happening of the occurrence and the manner of it. The admission of the witness shows that she was unable to identify any person of the mob on account of darkness. This is to be appreciated keeping in mind the fact that this witness is not eyewitness of *khancha* incident. The witness is admittedly not an eye-witness hence her personal opinion about light is without any personal knowledge.

(b-9) The SIT application has also been subject of discussion at para 59 and 60.

(b-10) At para 62 prior acquaintance of A-22 clearly stands proved.

(b-11) Daughter Noorjahan, bhabhi Salia, nephew Subhan and niece Muskan had not been heard, found or seen by anyone hence inference of their death is drawn by the Court as more than seven years have passed.

(c) FINDING OF PW-181 :

(c-1) At noon while going home at 4:00 p.m., the PW has seen two dead bodies, her house and rickshaw burning. This shows how serious the noon occurrence was.

(c-2) Dead body of crippled son of Mullaji was seen by the PW in the noon which proves his death in the noon occurrence beyond any doubt.

(c-3) The witness proves presence and participation of Guddu, Bhavani and A-22 in the noon occurrence near her house, say Muslim Chawls, after 4:00 p.m.

(c-4) The PW proves beyond any reasonable doubt that:

Her Daughter Noorjajan
Her Bhabhi Saliabibi
Her nephew Subhan
Her niece Muskan

had died in the evening occurrence on the date of the riot.

(c-5) Husband and son of the PW were injured and treated at camp.

(c-6) The PW Suffered damages in house.

45. PW-182 :

(a) The gist of the examination in chief of the PW is as under :

"I resided at Hussain Nagar, at about 09.00 or 09:30 a.m., mobs of Bajrang Dal, Shiv Sena and Hindus, came from Krishna Nagar Patiya along with different weapons, when I went to pick up my sister at Masjid, I saw the mobs.

I saw Guddu, A-10 and A-1 in the mob, which was doing stone-pelting on Muslims and on Nurani, they were giving slogans of 'Jay Shri Ram', 'Kill the Muslims', since the disturbances were increasing, I took my family in two-storeyed house at Hussain Nagar, I saw Bhavani Singh from the terrace and the men of the mob were looting, destroying and scattering the things into pieces and they were also burning dwelling houses of Muslims.

My house was looted, Guddu and Bhavani had passed away."

Identified A-10, A-1 has taken exemption.

(b) CROSS-EXAMINATION OF PW-182 :

(b-1) The witness has stated in cross that, “I resided at Hussain Nagar since last 15 years, I said about the workers of Bajrang Dal and Shiv Sena to be the members of the mob as they had tridents and swords in their hands.'

(b-2) It is true that the witness did not know Maulvi or Mulla of the Masjid, but in the opinion of this Court, that does not mean that he cannot identify the accused since the two are incomparable.

(b-3) Paragraph 19 is revealing the psychology of the victim witnesses which is too natural and which has been discussed at Part-2 of the Judgment under the heading of "Fear & Its Impact" and another. The witness has stated that at that time, the level of disturbances and tension gripped situation was so much that at that time, the witness did not give names of the accused, but merely that does not mean that the witness does not speak truth.

(b-4) Printed complaint-application and loss-damage analysis form at Exh.1261 is on record and that, that has been appreciated at Part-2 of the Judgment. Paragraph 22 can be read along with that.

(b-5) To highlight improbability, paragraph 29 has been highlighted, but in fact, what has been stated by the witness is very much probable and in any case, the Muslims being in minority would never do the attack in the fact situation of that day, they would only react and not act, but mere such reaction cannot justify the series of wrongs by Hindus because of which the death toll was so much risen. Crime can never be justification of crime in civilised and law abiding society where constitutional and human rights of others are to be respected as much as the personal religion of an individual is to be respected. No citizen of this country can ever forget that he lives in the country which is wedded to secularism as one of its prime features.

(b-6) Paragraph 35 shows that inability of the witness to give names of the accused in the year 2002 was not stated with reference to the accused No.10. It was therefore, applicable to

remaining accused.

(b-7) No suggestion or reply is found to be potential enough to doubt the genuinity in the testimony of the PW.

(c) FINDING OF PW-182 :

(c-1) The presence and participation of A-1, A-10, Guddu and Bhavani stands proved in the morning occurrence.

46. PW-183 :

(a) The gist of the examination in chief of the PW is as under :

"I was residing at Hussain Nagar, at about 9:00 a.m., I learnt that the mob had come, I came out, saw mobs were all around which was stone pelting on Muslims, I returned home, then went at Gangotri along with family.

In this mob I have seen A-26, Guddu, Bhavani and A-42, Guddu and A-42 had sword in their hands, I have also carried the guest at my home at Gangotri, where we were separated, we went to one terrace, been there, damages caused in my house, Bhavani and Guddu had died, Shehzad (A-26) and A-42 had been identified correctly".

(b) CROSS-EXAMINATION OF PW-183 :

(b-1) Para 14, 15 are related to topography which has been dealt with.

(b-2) At para 16 the witness has stated about the divider to had been existed between the highway. Some of the PWs have stated that there was no such divider. The point is it all varies from perception to perception and observation of the PW, hence no PW can be labelled as liar on such a trifle point of observation.

This is important as many witnesses have stated that a vehicle came along with the sachets of the snacks and liquids which were distributed to the rioters on that day which is focusing on such a minute preparations was made for commission of offence.

(b-3) At para 17 the witness has clarified that because of clamour, disturbances etc. he has learnt about the occurrence which though has been stated to be at 9:00 a.m. it is estimated time given by the PW without seeing the wrist watch which could be 9:15 a.m. also.

This is to be understood keeping in mind sense of timing with such rustic witness.

(b-4) Paragraph 18 is all about details of the occurrence. The admission at paragraph 19 that the counter stone pelting has hardly any relevance.

(b-5) Para 27 is related to the fact about the witness lastly when started for Gangotri he has seen only mobs and not any occurrence. This is not account of entire day.

(b-6) At para 29 the prior acquaintance of the witness with A-22 squarely stands established which in fact is a suggestion of the defence.

There is no probability of any enmity in the mind of the PW against A-42, if the last three lines of the para are read it is too clear that the witness does not know anything about the transaction between his father and A-42, when even the transaction itself is unknown how the said transaction can generate enmity. It is not clear as to how any enmity can exist without even knowing the existence of the dispute, if any, or even cause of it, if any. This is entire imagination of the defence in support of which there is neither any oral evidence nor any documentary evidence nor there is factor of probability behind the so called defence of enmity. It seems that the defence has forgotten that enmity is double edged sword. Is it not probable that A-42 might have taken the opportunity to settle his score, secondly, the rule of the exploitation is normally the tendency of powerful, to exploit the weaker. It is needless to clarify on record that the Muslims being in minority in the area were obviously weaker among the two, hence the defence does not sound to be probable by stretching the imagination to any extent.

(b-7) At para 33 the prior acquaintance with A-26 is also admitted. The reply given by the witness does not probablise the defence of false involvement.

(b-8) The knowledge of the witness about the death of Guddu and Bhavani only before two and half months itself is suggestive that the witness was not out to falsely involve the

accused but he is the witness of truth.

(b-9) The question at paragraph 35 at least makes the presence of the accused as admitted position.

(c) FINDING OF PW-183 :

(c-1) The witness proves the presence and participation of Bhavani, Guddu, A-26 and A-42 in the morning occurrence beyond all reasonable doubts.

(c-2) Damages in the house of the PW stand proved.

47. PW-184 :

(a) The gist of the examination in chief of the PW is as under :

"I resided for about 40 years right from my birth in the Pandit-ni-Chali, at about 9:00 or 09:30 a.m., there was clamour and disturbances outside on the road, mobs from Krishna Nagar and Natraj came, attacked on Masjid and Muslims, the mobs had different weapons, A-20 and A-41 were doing firing on Muslims, in the mob, I saw A-1, A-10, A-26, A-2, A-45, A-22, A-44 and A-40 (the name of A-40 is admittedly not remembered by the witness), the men of the mob were provoking the mob and were attacking on Muslims, A-41 and A-20 did firing by snatching away riffles of the police in which a Muslim died, which all are the occurrences upto 12:00 noon.

I was frightened, went to terrace of Gangotri,

ultimately at S.R.P. Quarters, my house was robbed and burnt."

The witness has identified A-2, A-10, A-26, A-1, A-41, A-40, A-20, A-22 and A-44, whereas A-45 was not identified though he was present before the Court, others were identified correctly.

(b) CROSS-EXAMINATION OF PW-184 :

(b-1) This witness has offered to the defence during the cross and shown his readiness to produce Government record where his address was shown of Pandit-Ni-Chali, but the defence did not invite then. On asking, the witness has also shown his readiness to show the receipts of the rents being paid by him, the defence declines the need of the documents but, still the defence has continued to allege the witness that he has no document and he was not residing at Pandit-Ni-Chali. According to this Court, the defence was sure that if the documents would be invited, the witness would produce it since was in possession, which proves the genuinity of the witness. The defence has no merits.

(b-2) At paragraph 22, the omission of the words that, " I was at my home", is indeed not material. In no way, does this omission rebuts the prosecution case.

(b-3) The suggestions at paragraph 24 highlights the truthfulness of the witness qua damages in his house, which is also supported at paragraph 25 where the witness had been at his home to draw the panchnama.

(b-4) It is true that at paragraph 25, the witness has admitted the suggestion that on that day (on the date of the statement), he had no fear, but as a matter of fact looking to the terrifying and horrifying occurrence, the witness would be falling in exceptional case if his mental position was otherwise than the position narrated in the topic of fear and its impact, there is nothing to believe that the witness had no fear, but as happens commonly normal male would accept to have the state of fear at any stage in his life. The tendency of male is to project himself to be very bold and to never admit his fear because in the set up of the society, the male is expected to be not afraid of and only then he can be called 'hero', so in a way, it is heroism to say that a male is not afraid. As is said in a usual language known to the society is, "Mard Ko Kabhi Dard Nahi Hota". The hard reality is mostly otherwise. The Court therefore, infers frightened position of the witness.

(b-5) Paragraph 27 to 29, 32 etc. are related to topography. In the same way, paragraph 41, 43, 44, 50, 56, 59 are all related to the statement of the year 2002, which all have been dealt with at Part-2 of this Judgment.

(b-6) At paragraph 30, the witness was suggested that the two mobs viz. of Krishna Nagar and Natraj seen by him on that day were mixed up, at paragraph 40, the witness has stated that the named accused were seen by him in the ground near S.T. Workshop and that they were identified by the witness at the S.T. Workshop (it has come on the record that at that time, near the gate of S.T. Workshop, there was a ground and the witness talks of this place.) The witness states that he has not seen the accused near Nurani Masjid, but opposite the gate of

S.T. Workshop and that he has seen them only once in the entire day. This is to be understood keeping in mind that at paragraph 42 and 68, the meaning of the version of the witness is, 'he is as good as an illiterate man', and that the police was writing many things of their own in the 2002 statement, at paragraph 38, the witness has stated the same place, if paragraph 54 is seen, the witness has stated that he has seen both the mobs standing near the wall of S.T. Workshop, at paragraph 95, the witness has clarified that Natraj Hotel from where one of the mob was marching is situated parallel to the wall of S.T. Workshop, hence in a way, both are one and the same. In nutshell, if all these is read collectively, the witness is consistent and most credible on the point as to at which place and from where, he has seen the named accused.

(b-7) At paragraph 52, the witness clarifies that he reached to the wall of S.R.P. at about 12:00 noon, at the terrace of Gangotri at about 2:00 or 3:00 p.m. and inside the S.R.P. at about 06:00 p.m. which all sounds very meaningful and believable one.

(b-8) If the voluntary statement at paragraph 60 is read, it is clarifying that it is the Crime Branch which was taking complaints of the victims and not any N.G.O. This is absolutely probable and this is notable when on detailed scrutiny, this Court has held that the record of the previous investigation is not believable one.

(b-9) If paragraph 71 is seen, there appears brilliant possibility and opportunities for the witness to observe and note all the accused from the wall of S.T. Workshop where in

fact, he was standing. Paragraph 72 is to be appreciated keeping in mind that the mob coming from any direction was not stationary mob, but was a marching mob, hence even if the witness has observed and seen the named accused near S.T. Workshop, it does not mean that their presence is fixed at that place as the accused were very active, moving and were involved in executing their conspiracy and to attain the goals of the unlawful assembly.

(b-10) At paragraph 99, the prior acquaintance of A-41 along with his business, stands confirmed to have been said by the witness right in the year 2002. At paragraph 102, the witness admits that he has not clarified before the SIT that Manoj Builder and Manoj Videowala is the same person, but then how was it required for the witness to state when in the year 2002 itself, the witness has so stated, is not understandable. Be as it may be, but this Court believes that this in no way, challenges the credibility of the witness.

(b-11) When in the previous statement, which according to SIT and even according to the defence were read over to the witnesses by the SIT, the name of A-20, A-2 and A-22 were given, why would he give any complaint related to that. Secondly, it is not important which complaint was not made to the SIT, but it is important that what was said in the SIT and all that is told in examination-in-chief was told to SIT, which is satisfying the judicial soul to believe the witness.

(c) FINDING OF PW-184 :

(c-1) The presence and participation of A-1, A-10, A-26, A-

2, A-22, A-44 and A-40 stands proved beyond all reasonable doubt in the morning occurrence.

(c-2) A-20 and A-41 were even involved in private firing in morning occurrence.

(c-3) A-45 is granted benefit of doubt qua this PW.

(c-4) The house of the witness was looted and burnt in the occurrence.

48. PW-185 :

(a) The gist of the examination in chief of the PW is as under :

"I was residing at Hussain Nagar since 32 years with family, there was one inauguration of Cabin of Pan at about 09:30 a.m. for which I was to carry children to recite 'Kalmas' from holy 'Quran-E-Sharif'. The witness saw the mobs outside which was doing firing, had swords, there was stampede at about 09:45 a.m., the mob attacked Muslim chawls with weapons, who had also sachets of snacks, the mob was looting and destroying the things to pieces, I have identified Bhavani, A-25, A-22 and Guddu in the mob, Bhavani and A-22 had sword, A-25 was tempting the Muslims to go in another directions under the guise that the safety arrangement for the Muslims has been made on that side and that Tiwari was provoking the men of the mob and that after diverting Muslims by making a show of giving shelter, he was calling the mobs.

After 02:30 p.m., I went to Hussain Nagar from S.T. Workshop, burning rags were thrown on the dwelling houses of Muslim, which was catching fire, in the noon, there was all scuffling, cutting and killing and looting in the Muslim chawls, while going to Gangotri for safety, I returned to Hussain Nagar, Lane No.4 when A-22 chased me, but I could run away faster in which I was injured, I went to one taller house, at about 06:45 then went to camp, for my injury, I was treated at camp, my house has suffered damages, Guddu and Bhavani had died."

The witness has correctly identified A-22 and A-25.

(b) CROSS-EXAMINATION OF PW-185 :

(b-1) While noting the gist, this Court has not noted the gist of the omissions before the SIT which are as per the record, first three lines of paragraph 10, first two and a half lines of paragraph 12 and 13 and first three lines of paragraph 19. This Court opines that all these are not found to be that material omission, which are required to disbelieve the witness. This shows that the witness is natural and not tutored, even if the omitted part of the examination-in-chief are not considered, the case of the prosecution does not suffer in any manner except that the name of the A-25 cannot be held to have been proved for the evening occurrence, however, it stands proved in the morning occurrence.

(b-2) The witness admittedly resides at Patiya from his birth, this facilitates drawing inference of prior acquaintance with the named accused who all are in fact, from the same Muslim chawls at the time of occurrence or just before the

occurrence and/or in any case are certainly residing in the same locality.

(b-3) At para 35 the witness admits that in the application for damages, he did not give complaint for the occurrence which is obvious for the reason that the previous investigator were held to be not inclined to note down anything more than the cause of damages.

(b-4) At paragraph 40, it is suggested that while drawing the panchnama, the name of the accused or the facts of occurrence were not stated. In fact, it is to be understood that what is recorded by the police in the panchnama, is the state of, the then position of the property wherein the suggested contents are obviously irrelevant.

(b-5) At paragraph 43, the uniform mechanical statement of SIT and the fact on printed complaint application etc. have been focused. It is seen and noted that the defence has very much relied on such printed applications to highlight material omissions, but here it is attempted to be focused that the contents in the printed complaint application is in fact not the statement of the witnesses. The prosecution is submitting right from the beginning that these are not the complaints of the victims as is understood in Cr.P.C.

(b-6) At paragraphs 62, 75, 78, 79, 80, the statement of the 2002 has been highlighted where again one more witness has stated that the police used to record a self-styled statement on the name of the witnesses.

(b-7) Paragraph 55 is related to the prior acquaintance of the witness with the A-22.

It is not at all penetrable that how there can be enmity against A-22 for the marriage of one Shehnaz and Shravan even if coincidentally, the said Shravan is brother of A-22. There can be enmity for Shravan when he marries. When name of said Shravan is not given by the witness, but that of A-22 is given, it is clear that the enmity cannot be for even Shravan. If there is no enmity for Shravan, how can there be enmity of his brother A-22. The defence is not at all probable.

(b-8) Paragraph 65 does not improbablise the occurrence, it is in fact other way round when the prosecution case is that, the occurrence started after 09:30 a.m. and more particularly, it was activated and fastened after arrival of A-37.

(b-9) If the note below paragraph 76 is perused, the consistency of the witness in naming A-22, A-25 and Guddu is clearly emerging on record.

(b-10) The omission mentioned that of Paragraph 11, 12, 13, 14, 19 and 20, is not at all material omission because if the omission at paragraph 13 is seen, it is not material because it is not important as to what was in the hands of the men of the mob, but it is material as to what the men of the mob have done.

Except at paragraph 19, the detailed role of A-25 is also at paragraph 14, which remains unrebutted and that the presence and participation of A-25 in the morning mob very

much stands proved. With the mentioned omissions, the presence and participation of A-25 in the evening mob, cannot be believed, but then virtually that makes no difference when A-25 is proved to have been present and participating in the morning mob.

(c) FINDING OF PW-185 :

(c-1) The presence and participation of deceased Bhavani, Guddu, A-22 and A-25 stands proved in the morning occurrence beyond reasonable doubt.

(c-2) The occurrence of the noon in the Muslim chawls stands proved.

(c-3) The presence and participation of Bhavani and A-22 stands proved in the evening mob.

(c-4) The damages to the house of the witness and injury to the witness in the occurrence and treatment at camp stands proved.

49. PW-186 :

(a) The gist of the examination in chief of the PW is as under :

"I am residing at Pandit-ni chali since 33 years, on that day I went for my labour work along with my two sons, my husband was driving rickshaw, I returned from my work place because of the bandh, saw mobs coming from Krishna Nagar

and Natraj, one of the mob was led by Bipinbhai, the leader of another mob was Shehzad, our rickshaw and other things were burnt on that day, they were also burning Masjid, upto 7:00 p.m. we had to be outside SRP Quarters, because of the disturbances we could not go to our house.

We went to terrace of Gangotri, I know Bipinbhai, I do not know Shehzad. While statement I was afraid. I know Bipinbhai, who was very much in front of me at the time of occurrence".

A-44 was identified by the PW whereas, A-26 was not.

(b) CROSS-EXAMINATION OF PW-186 :

(b-1) The PW has stated that he was never residing at Kashiram-Mama-Ni-Chali. (surprisingly in the only statement of the witness, the previous investigator has written address of Kashiram-Mama-Ni-Chali, Saijpur Patiya, Ahmedabad, this shows the kind of the previous investigation it was).

(b-2) It is admitted by the witness that the factory of ice and the temple of Dhanurdhari Mata are near Garage of Bipinbhai which both were situated outside his house. This shows prior acquaintance of the witness with A-44.

(b-3) It is admitted that Pandit-ni-chali is in the lane of SRP Coat where the witness was standing according to her upto about 07:00 p.m. and then she went on the terrace of Gangotri. Even though she reached in the area, she could not

enter her house, this shows how serious the entire occurrence was wherein in spite of reaching close to her house, the witness could not even enter in it and had to remain outside the house and ultimately had to go to camp.

(b-4) It needs a note that the evening occurrence was in fact at the water tank which was between Gangotri Society and Gopinath Society and which was falling on the road. Hence the question that she has not seen the occurrence at Jawan Nagar or Hussain Nagar in the evening does not prove anything and atleast it does not create a reasonable doubt against the occurrence.

(b-5) No complaint has been lodged by the PW in the Camp, but this does not mean that what at present whatever is being told by the witness or what she has stated in her statement, is full of falsehood and is after thought.

(b-6) At para-21, the witness states that she is not aware whether she has given name of Shehzad or not, she also does not identify Shehzad. It was observed by the Court that she was really not able to identify Shehzad in the Court. As it may be, but since no TIP was held it seems that A-26 needs to be granted benefit qua this witness.

(b-7) However, in view of what has been discussed for A-44 and para-10 of the examination-in-chief and further noting that no substantial challenge has been made to the version of this witness qua A-44 and when it is becoming very clear that A-44 was leader of the mob, A-44 is identified by the witness, the mobs have burnt rickshaw of the witness, even many other

things were torched including the Masjid and the disturbance was on its climax when being closed to the house, the witness could not enter in her house. Considering the totality, of what is discussed hereinabove, it needs to be held that A-44 is found involved in the morning incident beyond reasonable doubt.

(c) FINDING OF PW-186 :

(c-1) The presence and participation of A-44 in the morning occurrence, stands proved beyond all reasonable doubts.

(c-2) A-26 is granted benefit of doubt qua the PW.

50. PW-187 :

(a) The gist of the examination in chief of the PW is as under :

This witness resides at Jawan Nagar, at about 9:00 or 9:30, saw the mobs, the activities of the mobs were stated by the witness in tune of other witnesses.

She has seen Bhavani and A-25 in the mobs of the miscreants, her own house was burnt, she herself was injured, ultimately went to the terrace of Gangotri.

A-25 has been identified and Bhavani had passed away.

(b) CROSS-EXAMINATION OF PW-187 :

(b-1) At paragraph 13 to paragraph 22, the questions are on topography, which has been discussed in Part-2 of this Judgment.

(b-2) At paragraph 23, the statement of the year 2002 has been referred and admitted by the witness. According to it, the witness and her neighbours were cordoned by the mob and they went at the Medan of the backside.

(b-3) At paragraph 30, the witness has stated that the mob was burning shops, at paragraph 39 also the witness states that the witness has seen torching dwelling houses of Jawan Nagar, this is supporting the prosecution case.

(b-4) At paragraph 34 to 36, omission from the statement of 2002 have been highlighted, but then the said has already been discussed at Part-2, suffice it to say here that those statements are not forming reliable record.

(b-5) It is admitted position that after the occurrence, A-25 resides in the adjoining society. It is not even at stone-throw distance and before that he was residing in Muslim chawls. Considering the said, the question of holding T.I. Parade for A-25 is absolutely not found to be essential to hold the involvement of A-25 in the occurrence through this witness. The way in which the witness has stated before the police as is noted below para-42 and as the impression of the Court goes about the witness, it is becoming very very clear that Bhavani and A-25 were already very well known to the witness before the occurrence. This also confirms prior acquaintance.

(b-6) This witness has seen two mobs near Nurani Masjid and he further states that there is divider on the National Highway. He has also stated that the mob assembled near Nurani was throwing stones on Nurani and was attacking Nurani, the first attack of the mob was on the Nurani as is admitted at para-47. It is after the attack on Nurani, the mob diverted towards the Muslims, the Muslims then started going on the backside of their Muslim chawls. The witness remained at terrace of Gangotri.

All the material in the cross-examination as well as in the examination-in-chief if appreciated, the witness has supported the prosecution case involving A-25 and Bhavani.

(c) FINDING OF PW-187 :

(c-1) The presence and participation of Bhavani and A-25 in the noon incident at about 3.00 to 4.00 p.m. in the Muslim chawls, stands proved beyond all reasonable doubts.

(c-2) This witness was injured and his house was burnt.

51. PW-188 :

(a) The gist of the examination in chief of the PW is as under :

"At present I am working as T.C. in S.T. Corporation, residing at Officers' Quarters. In the year 2002, I was residing at Pandit-Ni-Chali with my family, I am residing at Pandit-Ni-

Chali from about 1960.

After 10:00 a.m. hearing about disturbances on road, I went on the road near the Municipal Water Tap. I saw a mob coming from Krishna Nagar having swords, tridents, containers filled with chemicals in their hands, the mob was led by Bipin Auto.

At this time, I also saw one mob coming from Natraj. The mob was led by Manoj Video, Suresh Langda and one Sindhi. This mob also had swords, trident and chemical containers in their hands.

The mob which came from Krishna Nagar, parked the tanker filled in with kerosene near Masjid, at the same time, one crane was also brought near Nurani and parked there. The mob from Natraj has also attacked Nurani. The mob has beaten the Maulana of Nurani, the Masjid was torched, hence the boys assembled near Pandit-Ni-Chali.

At 11:00 a.m., firing was done from mob of SRP which has hit Abid and Mustaq (private firing). This mob then after started forcefully entering in the chawls near Nurani and in Pandit-Ni-Chali.

The mob has broken the things into pieces and burnt, the men of the mob forcefully entered in chawls around Nurani Masjid, Pandit, Hukamsinh, Chetandas and Badarsinh.

At about 12:00 noon, apprehending that they would kill my family, I along with my family went on the backside of

Pandit-Ni-Chali towards Hussain Nagar at SRP situated, behind Hussain Nagar, we were slavishly requesting the SRP people to permit us to allow us inside, but they were not permitting us.

At 01:00 pm, I came back to my house keeping my family members at Hussain Nagar to take away precious ornaments and cash, at this time, I saw mob there, one of the man of the mob has beaten me with pipe on my right leg, they were shouting 'Beat and kill Miyas'. I had to return Hussain Nagar without taking ornament and cash.

At this time, the mob started increasing at Hussan Nagar and near wall of ST, the men of these mobs were beating and killing people and were burning them.

Because of this kind of horrible situation, at about 5:00 pm, from Hussain Nagar, I went to the terrace of Gangotri where so many Muslims were there, at this time, my family members were separated from me.

I saw from the terrace of Gangotri that Bhavani and Tiwari were showing the mob the place where we were hidden, by giving signals to the mob. This mob has cut the men by sword and burnt the people alive by burning, throwing thicker wick made of rags for kindling fire.

Upto 12:00 midnight, we were at the terrace, then the police vehicle came, we went to camp in the police vehicle, while going, we saw many burning dead bodies near ST Wall, which were unidentifiable one.

My wife was also injured on her back by stone-pelting.

My whole house was burnt and all my households were robbed by Chharas".

The witness has identified A-44, A-25, A-22 and A-41. Bhavani is dead. A-20 was not identified.

(b) CROSS-EXAMINATION OF PW-188 :

(b-1) Like paras 22 to 24, 66, 83, 96, 98, 106 etc. much has been asked on topography and in the same way, omissions and contradictions with the statement of the year 2002 has been asked at para 47, 48, 49, 52 etc. during the cross, at para 30 a uniform mechanical sentence of SIT 'all what is written in the previous statement is true and correct', has been emphasized, which all have been dealt with in the Part-2 of the judgment, hence need not be repeated.

(b-2) The witness was a conductor in the ST at the time of occurrence. But now, he is officer in the S.T. Corporation. He stands on different footing then the other illiterate Muslim victims of the crime. He is in a way exception of the Muslim witnesses.

(b-3) Exh.1283, has been brought on record by the defence to prove that this is a complaint given by one Ibrhimbhai Dawoodbhai Mansuri. Exh.316 has also been brought on record by the defence, which is FIR of this exh.1283, which has been numbered as Ist C.R. 210/02.

It is true that the complaint of the present witness is not found to have been merged in Ist C.R. 210/02 or else it would have been reflected in FIR Exh.316.

(b-4) On demand by the defence, the prosecution has produced a complaint of the present witness. This complaint as has been noted below para 111 is dated 5/3/02, wherein, the witness has given name of Bhavani, Suresh Chhara (A-22), Bipinbhai (A-44), Manoj Sindhi (A-41) etc. Thus, in this printed complaint application of the witness the involvement of about four accused is clearly mentioned as member of mob of miscreants or say mob of unlawful assembly with weapons cutting, killing and burning Muslim people. This is very strongly supporting the version of the witness who is today also involving the said accused in addition to A-25.

(b-5) It seems that the complaint application given by this witness has been kept unattended and has not been dealt with or is not mentioned or merged in any other C.R. number. It is even not placed in the record of C. Summaries. The prosecution has not put on record any explaining circumstance as to why this serious complaint expressly showing name, telling type of participation and is coming from a person who is literate in comparison with other victims who are illiterate is kept aside. The prosecution has also not clarified on record as to why the complaint at Mark - C-1 with such serious allegations has not been taken even on record and made part of any C.R. number or for it no C Summary is also filed. In nutshell, this complaint is though of very serious nature has not been given due importance which could have helped unearthing truth and

more accused in the investigation.

(b-6) The grievances of the witness against the previous investigator can be noticed to have been made at para 36, 60, 62 and at other paras.

(b-7) At para 37 and 38, the damages suffered by the witness has been clearly proved on the record. It is true that the witness does not know as to who is the accused for the same.

(b-8) Para 41 very clearly clarifies that how wrong the uniform sentence in the statement of the SIT referred at para 30 is.

(b-9) This witness clarifies an important aspect which has been made subject matter to falsify and confuse many witnesses during their cross. At para 44 the witness states that there were four municipal water taps near ST Workshop and two water taps near Pandit-ni Chawl.

(b-10) Whatever is confirmed at para 53 about the presence of Bhavani and A-25 is in fact stated by the witness even in his chief.

At para 606 of PW 327 it is getting clear that only Bhavani was giving signals to the mob, this part of the statement does not ascribe a role of giving signal against A-25, but about the presence and other participation of A-25, there is dispute and looking to the facts and circumstances coming up on record against A-25, there is no material to hold that the

presence of Tiwari was innocent or as on looker.

It needs a note that except this there is no omission in the version of the witness in compare to his statement before SIT which according to this Court can only be treated as genuine earlier statement except the uniform sentence.

(b-11) At para 604, in the version of PW 327, the IO of SIT has admitted that the witness has not made any grievances about the omissions of the earlier investigation. This Court is aware that once that practice of uniform statement is adopted by the IO of the SIT, it is obvious that such complaints even if is made by any witness the said would be ignored or it would be made part of the SIT statement only if the witness has too much of persuasion. Secondly, it is also possible that the witness himself might have not given any importance to his own statement before crime branch for the reason that when SIT is appointed his layman understanding would be now whatever is done by crime branch does not remain at all and whatever he has stated before SIT that only is having the final value.

Any officer when once write the uniform sentence can never entertain the complaints against the previous investigators as firstly, the previous investigator is colleague and secondly it is usual tendency not to highlight mistake or fault of the predecessor.

In light of the foregoing discussion, this Court is not inclined to attach any value to para 604 and 605 of deposition of PW-327.

(b-12) This witness was working in the ST Corporation, and that, his version about the ST Corporations' wall and watch tower at para 68 and 69 clarifies the position.

(b-13) Para 74 clarifies that the Nurani was attacked, torched, kerosene tanker and crane were brought, the tanker was driven to Nurani. This supports the prosecution case about attack at Nurani.

Along with this, if para 77 is read it is clarifying that the disturbances began by attacking, stone pelting, burning Nurani and the surrounding shops and thenafter the attacks were made at Muslim Chawls before which firing was done. This also supports the prosecution case.

(b-14) At para 74, the fact that one white Maruti Frontie car was seen by the witness at the site, links the arrival and presence of A-37 and the fact is supporting testimonies of such other witnesses.

(b-15) The suggestions made at para 84 to 86 clarifies that according to the defence A-44 is a leader. His office is the meeting place for the workers of BJP and VHP, in the parliament election Bipin Auto Centre was made an office of the said candidate, out side his office there used to be huge posters of the BJP all the while.

At para 85, the witness has clarified that he was knowing Bipin from previously as, if A-44 comes in front of him he would be in a position to identify and even in the court he

has correctly identified A-44. This proves prior acquaintance with A-44.

(b-16) At para 88 and 89 right in the first line itself the prior acquaintance of the witness with A-41 and A-22 also respectively stands proved.

(b-17) Para 93 is the cross related to SIT application which has already been dealt with.

(b-18) Para 109 is the suggestion of the defence which shows that the house of Tiwari was very close by and according to defence the witness had been to the house of A-25 which in fact the witness has denied, but that shows the brilliant probability of prior acquaintance with even A-25.

(c) OPINION :

(c-1) This witness is natural, credible and consistent. He himself is injured and is indeed a victim of the crime. There is absolutely no material to doubt the version put forth by him except that A-25 was not giving signals to the mob but except that all the other part of the version of the witness stands proved.

(d) FINDING OF PW-188 :

(d-1) This witness puts on record the brilliant probability of private firing to have taken place at the site at about 11.00 a.m. in the morning occurrence.

(d-2) The witness proves incident of morning 10.00 a.m. at Nurani and presence and participation of A-22, A-41 and A-44 in the said incident beyond any doubt.

(d-3) The witness proves the noon incident of 1.00 p.m. and 5.00 p.m. at the Muslim Chawls.

(d-4) The witness proves presence and participation of Bhavani and A-25 in the occurrence at Muslim Chawls at about 5.00 p.m. in the noon occurrence.

(d-5) The house of the PW was damaged.

(d-6) It is accepted by defence that A-44 is leader of V.H.P. and B.J.P. His office is used in Parliament Elections as office of the B.J.P. candidate.

52. PW-189 :

(a) The gist of the examination in chief of the PW is as under :

"I am a resident of Hussain Nagar from Childhood.

At Chetandas Chali, near ST Workshop, I had my own Pan Shop and Tea-stall in which I used to do business from 7:00 am to 8:00 pm, I am 9th Std. Pass, both the shops were opened at 7:00 am, at about 8:30 am, my mother came to tell me to close the shop as the situation was not good and men of mob have been collected towards Natraj Hotel. I closed the shop and went to my mother's house at Street No.1, Hussain

Nagar.

At about 9:00 or 9:30 a.m., after I went to House at Hussain Nagar Gali No.1, screaming were heard from outside, hence I alongwith my friend went to corner at ST Workshop.

There were mobs near ST Workshop coming from Natraj who were screaming 'Beat, Kill', they were burning shops near Nurani, stone-pelting on us, then police did firing on us, about 4 persons were injured in firing.

I saw Suresh (A-22) and Manoj (A-41) at the mob near Nurani. Suresh had swords and Manoj had trident and private weapon, who all were doing stone-pelting and shouting to beat and kill.

Upto 11:30 or 12:00 noon, I was at my mother's house. I went on the backside chawls alongwith family members, when I saw throwing burning rags from ST Workshop and the stone-pelting being done. With this burning rags, hand of my sister was burnt.

We then went to Street No.4, Hussain Nagar at the 3rd floor, house of Pinjara, which was terrace.

At about 02:30 or 3:00 pm, I saw from the 3rd floor that the men of the mob were robbing our households and were torching everything and were beating and killing.

In this mob, I saw all the three brothers viz. Guddu, Hariyo and Nariyo, who were beating and killing and were

leading the mob and were showing to the mobs the places where Muslims were hidden by giving signals. They were robbing and kindling fire in our houses. All three brothers had swords. They were breaking the things into pieces at our chawls.

After this time, we saw from terrace to Gangotri where Chharas were beating the metal dishes (using it like drum), they were showing the men of the mob, the way to Hussainnagar and were in fact sending the mobs to Hussainnagar, where I saw Dalpat and Bhavani.

At about 12:00 midnight to 01:00 am, police called us and we went to camp. On the way, we saw many burnt dead bodies.

My father who was working in ST Workshop, went on job on that day, who could meet us after 10 days.

Entire household was robbed".

A-1, A-10, A-22 have been identified in the Court. Guddu, Dalapat and Bhavani had died.

A-41 is present, but not identified by the PW.

(b) CROSS-EXAMINATION OF PW-189 :

(b-1) The statement before the police of the year 2002 was confronted by the defence at para 27, 71, 100 to 102, 104, 105, 113 etc. The questions of topography are at para 97 and

108 etc. which both has been dealt with at Part-2 of this judgment.

(b-2) In light of the chief and contents at para 20, it is very clear that the witness is doing his business of running Tea Stall and Pan Centre on the service road near the national highway from 1998.

(b-3) None of the part of the cross improbablise the version of the witness.

(b-4) If para 51 is read, it is becoming clear that the accused to whom the witness has identified were going to his Tea Stall for tea. Para 59 is suggestive of the fact that those who come to the Pan Galla of the witness may not be known to the witness by name but he identifies such customers by seeing. This shows probability of identifying the accused even without knowing him by name.

This shows that the witness has correctly identified the accused.

(b-5) Para 74 shows that the terrace of the Pinjara is near Gangotri Society. This probablise the persons on the terrace of Pinjara to be able to see the scene at Gangotri.

(b-6) Entire para 75 is based on 'ifs and buts'. From the material brought on record, including this cross examination, there is nothing on record to believe that it was impossible or improbable to see from the terrace of Pinjara at to what was happening in the surrounding area.

In fact the house of Pinjara seems to be one of the rare houses in the area which has storey, hence the persons who took refuge at Pinjara's house and if they went on terrace it is most probable for them to have view of all the surrounding areas. Para 76 is also on the improbability for the witness to see the surrounding chawls, but as discussed, it is in fact probable.

(b-7) At para 80 the witness states that he has not seen Guddu Chhara, A-10 and A-1 beating someone and that he has not stated so in his police statement. At para 87, the witness admits that he himself has not seen any accused beating anyone of the area, he fairly states that it is for this reason he has even not stated before SIT that which accused has beaten whom.

Through this cross examination and suggestions in the defence it is clear that A-1, 10 and Guddu were present at the site of the offence. According to para 10, Guddu, A-1 and 10 have been ascribed role of robbing the household, torching the houses, the three were leaders of the mob and were showing Muslims to the Hindu mobs by giving signals and showing the place were Muslims were hidden and all the three had swords in their hands and they were robbing and torching the dwelling houses. Over and above the allegation of cutting and killing people the above allegations are also there, hence the admission at para 87 would not provide any defence to the accused A-1, 10 and Guddu.

(b-8) At para 90 the witness has denied the suggestion

that he has told to SIT that whatever was written in the police statement was true and correct. At para 91 also the witness disowns such statement to have been made by him before SIT.

(b-9) At para 92, 95, 96 the confrontation is on SIT application which has been dealt with at Part-2 of the judgment.

(b-10) At para 99 the witness has admitted that he has no documentary evidence to prove that the house of his mother was in Hussain Nagar. This is obvious as the Muslim houses were burnt, all the property was ruined and so many Muslims became homeless and had to take refuge at relief camps. It is to be understood that labour class people reside in small houses, who at times, are not given rent receipt or any such document and since they have to change their houses quite often, they sometimes do not procure such documentary evidence, but merely that cannot be taken in the meaning that the witness is of falsehood.

(b-11) No contradiction or omission from the SIT statement has been proved.

(b-12) The fact of cross stone pelting between Hindus and Muslims has been admitted by the witness clarifying that this is after torching was done by the Hindus. This point has been dealt with in its great detail, hence need not be repeated.

(b-13) Para 114 shows how natural the witness is who admits that I have to be close to the accused or say, to go near

them. This is nothing to be surprised about. In fact the witness is seeing the accused after 8 years, which is not a small period. Most of the witnesses are now not inhabiting in Patia area and are residing in some other area, hence they had no opportunity or it is not possible for them to see the accused again. In the opinion of this Court, after 8 years identification of the accused, may be by going close, is itself sufficient and satisfactory. There is nothing wrong if the witnesses are identifying the accused by going close to them. No prejudice is caused to the accused by permitting the witnesses to have a close look of the accused as the court has to bear in mind that firstly about 8 years have passed, secondly in this big court house the witness is alone, whereas the accused are 61 in number, they sit in group and the witness has to muster courage and confidence to go to the accused and to identify them. The court can never forget that the span of 8 years give many physical and mental changes to everyone, hence justice demands to permit the witness to have a closer look of the accused. The witnesses were therefore, permitted to have a closer look of the accused.

(b-14) This witness has not identified A-41 for which nothing adverse is noticed by the court and even A-41 was very much sitting in the court house when the witness was given an opportunity to have a closer look of the accused, but still PW could not identify him hence A-41 needs to be given benefit of doubt qua this witness.

(c) FINDING OF PW-189 :

(c-1) The presence and participation of A-22 is proved in

the morning incident beyond any doubt.

(c-2) Entire household of the PW was robbed.

(c-3) The sister of the PW was burnt because of throwing burning rags in the morning occurrence.

(c-4) The presence and participation of Guddu, A-1 and A-10 stands proved in the noon incident.

(c-5) The presence and participation of Dalpat and Bhavani stands proved in the noon incident (3.00 p.m.).

(c-6) A-41 is granted benefit of doubt qua this PW.

53. PW-190 :

(a) The gist of the examination in chief of the PW is as under :

The witness is residing at Jawan Nagar in his own house right from his birth, after about 8:00 p.m. he heard clamour around, saw mob coming from Natraj and Krishna Nagar, who did stone pelting, robbed and burnt shops and cabins etc. and attacked Nurani, police did firing and bursted teargas.

The mob burnt rickshaw and tanker parked outside Nurani, at 12:00 noon, he saw stone pelting on Jawan Nagar from ST Workshop, pursuaded Hindus to not do stone pelting etc., but they continued, at about 3:00 p.m. kept the family

inside the SRP Quarters, then after the mobs came, some of them went to terrace of Gangotri, mob was increasing very fast and was robbing and burning Muslim houses.

The PW was injured by stone near ST, he took treatment at camp.

The PW has stated that Guddu had died. Witness did not identify A-41.

(b) CROSS-EXAMINATION OF PW-190 :

(b-1) First of all the fact that the witness did not identity the accused needs to be dealt with.

(i) This witness is admittedly residing in the Naroda Patia locality right from his birth.

(ii) The attitude of the witness as noted below para 18 and note below it, was clear that the witness had already made up his mind to not identify A-41 for any reason. The witness has not seen all the accused and has returned without looking at all the accused even though he was explained that the accused are sitting in three lines in many benches, but since he had decided to not identify A-41, he has returned. The reason for such attitude may be fear or other factor. From his behaviour it was not clear that whether he knows A-41 or not. He did not identify him in the Court.

(iii) At para 27 the witness has clarified that those who were in the mob were all known to him.

At para 29 witness admits that he lives in the area right from his childhood.

At para 44, the witness denies the suggestion that he has not seen Manoj and Guddu and that he has given the names of the accused falsely.

At para 69, the witness confirms that the fact that he has seen Manoj in the mob was told by him to police. If the note below it is seen, it is clear that in the statement of 2002, mention of both the accused is even with address.

All the above absolutely goes with the examination in chief and more particularly involvement of both the accused in the crime.

At para 15 of the examination in chief, the witness states that at 3:00 p.m. he has seen A-41 in the mob when he had sword and the stone pelting was on going.

A-41 is very popular person in the area, is running different business, is known with the name of his business viz. Videowala, the witness is residing from his birth in the area and that he has given name of A-41 right in the year 2002 involving him in the mob of miscreant with sword, with overt act of stone pelting etc., which all collectively can guide the court that since the witness has not formally identified A-41 and when TIP was not held, A-41 needs to be granted benefit of doubt.

(b-2) Paras 19 to 24, 34 are related to topography which has been dealt with at Part-2 of the judgment.

(b-3) The cross stone pelting is a matter of fact which has been asked to many many PWs which has also been dealt with and discussed, hence needs no repetition.

(b-4) As is clarified at para 40, the witness has studied upto 5th standard only. Here again the witness states that he has seen the stone pelting near Nurani at about 10:30 or 11:00 pm and at para 41 he states that the tanker was seen at Nurani Masjid at 10:00 where, out of rickshaw and tanker parked nearby, the rickshaw was burnt first.

(b-5) At para 45 the witness admits with a suggestion that Muslims were extremely afraid from this incident. This goes with the point discussed at Part-2 about fear and its impact etc.

(b-6) At para 50 and 51, the application given to SIT has been discussed. If para 57 and 59 and the note below it are read together it is clear that the witness went at the corner where the Muslim chawls were completing, road was approaching and the ST Workshop wall was existing there. It is now very clear on record that the ST Workshop gate was in the wall of the ST Workshop opening on the road side. The question that the witness came on the road is to be understood keeping all these things in mind that he came near the wall of ST workshop, close to the gate, which is in fact the road outside his chawl and it is not exactly at the gate of ST workshop. All these goes with the prosecution case without any doubt left in the mind of the Court.

(b-7) The cross examination to improbablise the version of the witness has not become effective indeed.

(b-8) The omissions attempted to be shown from the statement of the year 2002 does not yield fruits for the reasons already mentioned at Part-2 of the judgment.

(b-9) Overall nothing is shown to doubt the truthfulness of the witness.

(c) FINDING OF PW-190 :

(c-1) Presence and participation of deceased Guddu stands proved in the occurrence of the noon at about 3.00 p.m. as a member of the mob of miscreants.

(c-2) PW was injured in the stone pelting in the noon occurrence.

(c-3) Benefit of doubt is granted to A-41 qua this PW.

54. PW-193 :

(a) The gist of the examination in chief of the PW is as under :

This witness is resident of Pandit-ni-Chali, he is a rickshaw driver, he deposed that he saw the morning incidents, mobs, teargas shell firing, he saw Bipin (A-44) in the mob, he saw private firing from the mob of Krishna Nagar, he also saw

the police firing, mob used gas cylinders from Uday and thrown it in the Muslim chawls etc., his son Ismail was hurt in stone pelting, Bhavani was seen at Jawan Nagar, Bhavani offered place to hide but, they could not trust him, he saw Guddu, they then went to terrace, his entire household was robbed and burnt.

(b) OBSERVATION OF THE COURT :

(b-1) Bhavani and Guddu had died. The witness knows all the three as stated at para 16. The witness after having seen from the witness box stated that A-44 is not present. In fact A-44 was present in the Court, for the reasons best known to the witness he has not identified A-44 but, since TIP was not held, benefit to A-44.

(b-2) As far as Guddu and Bhavani are concerned, no incriminating material is put forward by the witness about their acts and omissions. Considering which it would not be proper to hold that Guddu and Bhavani were involved in the crime when this witness has seen the occurrence.

(b-3) Considering this discussion none of the named accused can be held to be involved in the crime. It is true that Guddu and Bhavani were present at the site, but mere presence is not offence. When A-44 is not identified though present, he is entitled to benefit of doubt.

(c) FINDING OF PW-193 :

(c-1) A-44, Guddu and Bhavani are entitled for benefit of

doubt qua this PW.

55. PW-197 :

(a) In her examination in chief the witness involves Guddu, Bhavani, Shehzad (A-26) and Ganpat (A-4). She was unable to identify A-4 and A-26. Neither the fear or any adverse element has been observed by the Court while the witness went for identification of the accused.

At para 18, the witness has admitted that the four named persons by her have not put any band on their face or have not covered their face, she has not seen the four with any weapon or even she has not seen them torching something, robbing or killing someone. This is sufficient to grant benefit of doubt to all the four accused.

The cross examination is also on SIT application, topography, challenging the probability, impeaching the credibility and many more things. It has also been revealed that the witness is illiterate.

If the examination in chief is seen then this witness has involved the accused seeing the mob near Nurani who were doing stone pelting, burning the Muslim houses etc. which as seen during the cross, none of the act and omission is ascribed to any of the four accused. This would reduce the allegation only to the presence of the four accused without identify of A-4 and A-26 who were present in the Court. As TIP has not been held qua A-4 & A-26 benefit to both hence this witness is held to have been not proving the prosecution case.

(b) FINDING OF PW-197 :

(b-1) A-4, A-26, Guddu and Bhavani have been granted benefit of doubt from the charge of their involvement in the crime, qua this PW.

56. PW-199 :

(a) The gist of the examination in chief of the PW is as under :

The witness is resident of Chetandas-ni-Chali, Naraoda Patia for about 30 to 35 years, is driver in AMTS, he deposed that "at about 9:00 or 9:30 a.m. mobs assembled outside his house on the road, at Nurani there was clamour, mobs were coming from Natraj and Krishna Nagar with pipes and scythes and weapons who burnt carts, shops, cabins etc. they started speaking provokingly 'beat and cut, burn' the persons who were leading the mob of Krishna Nagar and provoking mob of the Krishna Nagar were Suresh (A-22), Guddu, Bhavani and Tiwari (A-25). These four persons were pointing the place where Muslims have hidden themselves to the mob, police firing started, mob entered in the Muslim houses, then I along with my family went inside SRP Quarters".

The witness has identified A-25 and A-22 correctly. Further stating that Guddu and Bhavani had died.

(b) CROSS-EXAMINATION OF PW-199 :

(b-1) The cross examination is on the statement of the year 2002, topography, application at SIT and its details, on the uniform sentence of the SIT statement etc. which has already been dealt with.

(b-2) The part of the statement of the SIT has been admitted by the witness at para 27, 30, 34 etc. which in fact proves the prosecution case. The cross stone pelting has been discussed and this witness has admitted it at para 31. But in the facts of the case that indeed does not prove anything.

(b-3) To many witnesses, who were unhurt in the occurrence, the confrontation was laid on the ground that since the witness has not been injured his presence at the site is not probable, but this cannot be accepted. It is sheer luck of the witness that he has remained unhurt but that itself cannot be taken as his absence at the site.

(b-4) At para 37 the witness has admitted that the four persons she has named were not having any weapon with them.

If para 8 is seen, it is becoming very very clear that the role ascribed to the four accused is that they were leaders of the mob, they were burning Muslim shops, and they were unduly entering in the houses of Muslims and were pointing the hiding place of the Muslims to the member of the mob.

OBSERVATION OF THE COURT :

It is observed by this Court that more often then not

the defence has adopted a practice of asking a question in the cross examination which the witness has neither stated nor alleged in the examination in chief. What is not alleged or deposed by the witness if is asked that amounts to creating a ghost and using the admission is killing the ghost. Such practice has not gained any benefit of doubt. On the contrary, sometimes it helps proving the prosecution case, truthfulness and genuineness of the witness.

(b-5) The attempt of showing contradiction using uniform mechanical sentence from the statement of the SIT and basing on most immaterial omission of one word from testimony of PW 327 at para 641 to 643 are not found impressive.

At para 145 in the testimony of PW 327, he has stated that all that was told by PW 199 was only written in his statement. In fact, except for the uniform statement, the statements of the SIT are fully relied upon by this Court. The reasons for not relying upon the uniform sentence in the SIT statement have been discussed at length. Suffice it to say here that except that sentence the statement of the SIT is found reliable and fully dependable. Needless to add that this Court has treated the statement of the SIT to an extent it is reliable as only dependable earlier statement.

(c) FINDING OF PW-199 :

Presence and participation of A-22, 25, Guddu and Bhavani stands proved in the occurrence of morning.

57. PW-200 :

(a) The gist of the examination in chief of the PW is as under :

The witness is resident of Hussain Nagar since about 30 years, who runs a garage. This witness has seen morning incident. In that mob he has seen A-44 with revolver & A-33 with sword who were coming in Krishna Nagar mob. The mob has attacked Masjid, burnt vehicle.

Police did firing and bursted teargas. Seeing all these, Muslim boys started running away. The witness and his other Muslim friends started one TATA 407 lying there, by pushing the same and they ran away in that vehicle wherein the witness hid himself below the seat. Near Naroda ITI the Muslim boys set in the vehicle jumped out, but, the witness remained hidden hence, police arrested him, took him to Naroda police station and at the evening sent him to relief camp.

The witness was injured by the mob assembled near Naroda ITI area.

T.I. Parade was held wherein the witness identified A-33. The witness has identified A-44 in the Court.

(b) CROSS-EXAMINATION OF PW-200 :

(b-1) During the course of the cross examination the defence has tried to put up its case by suggesting that, until the witness took TATA 407 by driving himself and unless he

killed the mobs of Hindus no occurrence has taken place at the site (Para 129).

In the opinion of this Court, there is no material on record to believe that Hindu mobs were killed by driving TATA 407, as was suggested by the defence. Hence, such a case merely seems to be an imagination of the defence and neither the suggestion has any ring of truth nor it is found to be probable to kill mobs by driving a vehicle.

Moreover, there is nothing on record to believe that this witness was driver of TATA 407.

(b-2) If para 128 of this witness and 644 onwards from the deposition of PW 327 are read then, it is becoming very clear that the witness did state before the SIT that out of the two Maruti Cars lying at his garage, one was his own. Since this sentence is in the statement before the SIT the said is taken as earlier statement of the witness. This sentence in fact probablise that the witness was not a driver of the TATA 407, as he states. If he was to drive the vehicle he would have chosen his car, but the TATA 407 lying on the road has been chosen. This shows that the witness is giving a truthful account of the occurrence wherein Muslim boys have pushed the TATA 407 and sat inside that vehicle wherein the witness has hidden himself below the seat which tallies with the fact that he did not take the cars lying in his garage whether that of his own car or of somebody else that is indeed not material.

(b-3) The another point raised by the defence is that, the witness is the principle root cause for which the entire

occurrence has taken place and people present there in the mob were provoked and as suggested at para 113 & 114. The defence is putting up a case that the witness was in fact a member of the mob of Muslims who were stone pelting, had acid bulbs, broken tubelights etc. and also had weapons with which the Muslims have attacked on Hindus and the driving was with an intention to kill the Hindu mob which was not controlled by the Muslim mobs, TATA 407 was driven by the witness.

In the opinion of this Court, as has been volunteered by the PW, the attack was in fact done on Muslims by Hindus. In the case on hand, this is what has been exactly proved.

The suggestions put up by the defence has no link with hard reality, no material has been placed on record by which the suggestions can be believed by the Court, no oral or documentary evidence is highlighted to believe the suggestion hence, such suggestions cannot constitute a valid and acceptable defence.

It is suggested that Tata 407 was driven by the witness with an intention to kill the men of the mobs but, as a matter of fact, not a single person from the mob at Nurani was killed or injured because of driving of Tata 407 as, no such fact has even been whispered by anyone. Numerous police witnesses were examined, the record of police station came but, there is nothing to lay a finger on such complaint. There is absolutely no material to believe that the witness was driving Tata 407. It, on the contrary, comes up on the record that somebody else was driving and when all the Muslim boys

jumped out from Tata 407 near Naroda I.T.I. Crossing, the witness could not come out because he was hidden below the seat. it is more probable that he was not sitting in the car at the place where others were sitting, otherwise, he could have also jumped out alongwith other boys.

Moreover, it also needs to be appreciated that it is an admitted position that the witness has stated in his statement before SIT that he and other boys ran away in Tata 407 to save their lives hence the question does not arise to believe that they drove the car to kill Hindus in the mob. (Reference para-115 of the testimony of this witness and para-645 of the testimony of PW 327) When the entire exercise was to save one's life, the suggestions put forth by the defence obviously becomes incredible.

(b-4) At paragraph 117 of this witness and para-645 of PW 327, it has been ascertained by the defence that the incident of driving Tata 407 and running away in Tata 407 is of about 10:30 or 11:00. If para-11 of testimony of PW 274 (who is first I.O. and who has chased the Tata 407) is read, it is becoming clear that according to the first I.O. who states from his personal knowledge that the occurrence of Tata 407 took place about 11:30 a.m. Now, if entire case is seen, initiation of the disturbances in any case was from about 9:30 a.m. to 10:00 a.m. or so and in any case, it was before 10:30 to 11:00 a.m. Considering this point, it is extremely clear that the incident of Tata 407 was never the beginning of the disturbances and it can never be a cause to provoke Hindus, the defence is found to be absolutely baseless and incredible. The principle of reasonable doubt demands that the defence raised should

appeal the reason of the Court then only it can be held to be able to create reasonable doubt. Secondly, commission of any crime or any injustice can never justify another crime in its retardation.

(b-5) As a matter of fact, right from the beginning, the case against the witness is under Section 279, 337, 304-A etc. of I.P.C. and 174, 184 etc. of the M.V. Act, which does not go with killing Hindu mobs by TATA 407.

Exh.1428 has been brought on the record by defence during the cross. If the arrest memo is seen, it is of 03/02/2002 wherein the date of arrest is shown as 03/02/2002. However, this can be the slip of pen, but the point here is, this document does not prove any kind of defence except that the witness was arrested for the offences mainly of rash and negligent driving and he has not been arrested for any offence wherein with the intention to kill the vehicle was driven.

(b-6) Exh.327 is the injury certificate of the witness, this shows the history of the injury as the witness to have been beaten at 11:30 a.m. on 28/02/2002 by public. This is what exactly is told by the witness consistently, hence, this documentary evidence produced by the prosecution and proved by the doctor shows that the occurrence of the accident by Tata 407 took place at 11:30 a.m. after a long time from the initiation of the disturbances at Nurani Masjid which proves that the witness and other Muslim boys ran away since the disturbances were already on by the Hindu mobs and they were tremendously afraid.

(b-7) If Exh.1426, brought on record by the defence, is seen then it is becoming clear that the I-C.R.No.99/02 is not filed against the witness, but against the driver of Tata 407. The complaint of this case i.e. C.R. No.I-100/2002 was filed after I-C.R.No.99/2002 but, even then, I-C.R. No.100/2002 does not reflect that the driving of TATA 407 is the cause for initiation of communal riots. Moreover, this is not a complaint for intentional driving with an intention to kill, but it is the complaint of rash and negligent driving which in fact supports and proves what is said by this witness on oath.

(b-8) Exh.1427 is also brought on record by the defence. This is very illegible document, but it seems that this is N.C. complaint No. 119/02 to have been filed by this witness on 02/03/2002 which N.C. is under Section 323, 504, 114 etc. of I.P.C. even this document also does not help the defence to prove the defence version put on record through the suggestions.

Even the testimony of PW 327 at para-645 clarifies that the record says that there were two accidents and not the case of driving with an intention to kill Hindus.

In nutshell, the defence is not successful in establishing any defence through this witness who himself is victim of crime.

(b-9) The witness has identified A-44 in the Court, but he could not identify A-33 in the Court. However, the TI Parade held for A-33 was successful through this PW. While discussing Exh.240 with the oral evidence of PW 35, it is held by this

Court in the Chapter of TIP that the Panchnama was successful and PW 200 was successful in identifying A-33.

Considering the above discussion and finding of this Court it is very clear that A-33 was genuinely identified by this PW as the accused involved in the crime. It is true that in the Court the witness could not identify A-33, but that does not mean that the witness is speaking lies. The accused is UTP, his outer appearance must have been changed because of passage of time hence, it is possible that the PW may not be able to identify him.

(b-9.1) Para 124 of the testimony of this witness shows that the witness was called for TI Parade and PW 35 states that the official act of TIP was done properly. Moreover, at para 124 it is becoming very clear that the witness has no contact or relationship with A-33. The point is still he knows A-33 well and is introducing A-33 as the person involved, present and participated in riot, hence no doubt is left out in the judicial mind.

(b-9.2) At para 131 the suggestions given by the defence shows that the witness had been for TIP. It is not possible in every case to note down the identification mark for the witnesses who perform TIP therefore, the suggestion that identification marks were not noted does not yield any fruits.

(b-9.3) The witness, who as can be seen from the notes by the Court, was throughout disturbed during his testimony, who has not identified A-33 in the Court. This inability of the witness, after about 8 years in a case when he has rightly

identified the accused in the TI parade and when the witness has deposed on oath about all acts and omissions of A-33, cannot be held to be such which can washed out the entire testimony of the witness and the prosecution case put up through this witness. It is therefore held that the witness proves the case against A-33.

(b-10) Para 43 of the testimony read with para 44 and 45 of the testimony is very clearly and firmly proving that the witness has prior acquaintance with A-44 which was the identity gained before 10 to 12 years of the occurrence.

(b-11) Para 58 shows that the name of Bipin Panchal was not stated by the witness as Bipin Patel which therefore seems to be some error on the part of the writer of the statement. The witness has clearly stated even in the clarificatory statement that to whom he refers was Bipin Panchal (A-44) and none else.

Considering the above discussion it is clear that the witness has undoubtedly proved presence and participation of A-44 in the riot with revolver.

(b-12) The cross examination does not take away the contention that A-33 was in the mob of miscreants of Krishnanagar and was marching with a sword. It is this mob which has attacked masjid and burnt vehicles. This remains substantially unchallenged. In the humble opinion of this Court, this PW and A-33 are in the same business of garage hence, on account of personal relationship if, A-33 is not committing any crime against the PW, then it cannot be termed to be the test of A-33 or the test of his act and omission. It is no defence.

The act of A-33 to be with a sword, being in mob, attacking Nurani and burning vehicles on the date of communal riots, are all speaking evidence of the commission of the charged crimes by the A-33 who, is therefore, held to have been involved in the crime.

Here, it needs a note that, even A-36 has also favoured PW-110 and PW-146 but, only that was not held sufficient to grant him benefit of doubt but, the important consideration was that, he has saved even unknown 30 – 40 Muslims which is not in case of this A-33. Moreover, there were no other proof against A-36 but, against A-33 there are other evidences on record, revealing his involvement in the crime.

Hence, A-33 is held to have been involved.

(b-13) The witness has also been cross examined on topography, the statement of 2002, the complaint filed against him and different suggestions, but all those are found immaterial to disbelieve the witness.

(c) FINDING OF PW-200 :

(c-1) The presence and participation of A-44 with revolver and A-33 with sword stands proved beyond all reasonable doubt in the morning occurrence.

(c-2) Police did firing at the site in the morning occurrence.

58. PW-201 :

(a) The gist of the examination-in-chief of the PW is as under :

The witness is a brother of PW 104, who was residing at Hussain Nagar, he saw the incident of noon of about 16.00 hours when a mob came from Uday Gas Agency with sword, scythe in their hands, stone pelting, cutting and killing was started, Muslims started running here and there in which they parted from one another, the wife and children were also departed from this witness.

The niece of the witness Saliabibi with her children was sitting when in the stone pelting by mob she had sustained head injury, in this mob the witness saw Tiniya Marathi and Guddu with swords, who were showing the houses of Muslims to the mob and were also doing cutting and killing.

The witness then went to one terrace from where he went away to SRP Quarters through Gangotri Society, at this time witness saw A-28 who was pushing Muslim women by hockey towards the farm from the lane of Temple near Gangotri which is all the noon incidents.

This witness, in nutshell, saw presence and participation of Guddu, A-30 and A-28 in the noon incidents. A-30 and A-28 were identified by the witness whereas Guddu had died.

Damages has been sustained by the witness since

his house, household and cash was robbed, the witness went away on terrace at about 6.00 p.m. and has heard all screamings etc.

(b) CROSS-EXAMINATION OF PW-201 :

(b-1) During the cross examination, the printed complaint application along with loss damages form has been brought on record by the defence to highlight that in the said complaint the witness has not involved any of the accused, but it has been discussed many a times that it is nowhere clear as to who has written this printed complaint application and whether was it aimed only for the relief of compensation or not. In any case, it is not clear that it was written by police and it is to be treated as complaint under Cr.P.C. Considering which this printed application cannot be considered to be earlier statement by the witness and that, this document therefore does not prove that the witness omitted to stated anything in earlier statement.

If the FIR at Exh.304 of this complaint is seen, it is clear that the complaint of this witness has been accommodated at serial No.4 wherein none of the contents of the printed application is noted down. What has been noted is only from the loss damages form. Thus, even the previous investigator has not treated this printed complaint application as complaint before the police or even statement before the police.

It is true that the witness has signed this form, but it is nowhere clear that the contents were read over to the signatory which was essential in the case of the kind of the

rustic and illiterate witnesses. Moreover, if para-29 of the testimony is read, it is clear that the witness was not shown any printed form which is in tune of the discussion done above.

This Court is of the opinion that without any proof of the statement being the earlier statement of the witness and that too earlier statement taken with proper understanding of the witness and on the say of the witness it would not be proper to use it against the signatory. It may be used when the signatory owns the contents.

(b-2) At para-39, it stands revealed that the witness was knowing Guddu before 2 to 4 years of the occurrence and he was seeing him passing. This shows the prior acquaintance with deceased Guddu and the fact that the witness was knowing Guddu quite well. Hence there is no chance of any mistaken identity.

(b-3) At para-55 the witness has admitted that the house and shop of Tiniya (A-30) is in Jawan Nagar and the witness resided in the house of Tiniya on rent for about 4 years prior to the incident.

(b-3.1) The suggestion is, on account of enmity with said Tiniya viz. A-30, he is being falsely roped in the case by the witness. This has been denied by the witness.

(b-3.2) Another suggestion is that, that since the brother of the witness has done some harassment or outraging of the sister of the A-30, the case was needed to be filed against the brother of the witness and the dispute was on that count.

No case or complaint has been produced on record or shown to the witness, even no mention has been made in F.S. of such defence and even alongwith the F.S., no document proving such complaint to have been filed has been brought on record, hence no weightage can be attached to such suggestion.

(b-3.3) It is also suggested that the enmity is because of the arrears amount of rent, but then for that also, no evidence is produced or nothing is produced to accept it as probable.

In light of the above, even this suggestion does not carved out any justifiable defence.

It rather stands proved that there is prior acquaintance of the witness with this accused.

(b-4) Para-56 is related to A-28. Upon reading this para, the prior acquaintance with A-28 stands proved and the suggestions placed are not found to be of any worth.

(b-5) In light of the suggestions at paragraph 67, it is clear that the witness was knowing the persons who have been named by him in the deposition. This also shows that the witness was knowing them all.

In light of the above discussion, the presence and participation of Guddu, A-28 and A-30 stands satisfactorily proved on the record of the case.

(b-6) The deposition of PW 104 is quite tallying with the deposition of this witness.

(b-7) The other cross-examination is on the aspect that the witness has been provoked by one Nazir Master in the area and that on account of N.G.O., the witness has falsely involved the accused and that even though V.V.I.P.s and Dignitaries have visited the camp, the witness has observed convenient silence.

(b-8) The other suggestions that the witness is giving the testimony on account of pressure of NGO or pressure from his community have no bearing with the facts of the case.

(b-9) While perusing testimony of PW 327, at para 648, it is becoming clear that the fact that A-30 has thrown stone on Saliabanu viz. niece of the witness was not stated by the witness before the SIT. This Court is of the opinion that what is not stated in the earlier statement before SIT should not be accepted if stated in the testimony hence this part of the testimony is to be kept out of consideration, but here the fact remains that Saliabanu sustained head injury in stone pelting in the noon incident at the date and place is undisputed fact, hence who has thrown the stone is not important. What is important is whether Saliabanu has sustained injury in the incident on the date and time stated by the witness or not.

Other omissions and contradictions attempted to be highlighted are no omission and contradiction in the eyes of law.

(c) FINDING OF PW-201 :

(c-1) The presence and participation of Guddu and Tiniya (A-30) with sword and A-28 with hockey stands proved in the noon occurrence beyond all reasonable doubt.

(c-2) Niece Saliabibi of the witness has sustained injury in the noon incident. It was learnt by the PW that she and her three children died in the occurrence.

(c-3) The PW has suffered damages.

59. PW-202 :

(a) The gist of the examination-in-chief of the PW is as under :

The witness is a resident of Patia since 48 years and Hussain Nagar since 15 years, the witness had his business at Krishna Nagar, Naroda and Bapunagar.

In the morning while the witness was at Tea Stall, he saw the morning occurrence and saw there A-20, A-41, A-44, A-1, A-22, A-39 and Guddu. The witness saw the police firing. After this, another mob came which was led by A-44 and both the mobs were mixed up which mobs have looted their area.

At about 1:30 p.m. the witness saw the mob from Krishna Nagar hence he went to Jawan Nagar khada, this mob was led by Bipin. I went away and was there in the ST Quarters upto 6:30 a.m. Then after, they were taken out by the SRP police, hence they went to terrace.

At about 07:00 p.m. they were going to the society after Gangotri where they heard screaming of women, hence they ran to Hussain Nagar. At this time, a mob with weapons of about 200 to 250 persons was there at khada, the mob has marched towards the Muslims hence Muslims ran away, some of them could reach to Hussain Nagar and some of them could reach to Gangotri, at this time the children of this PW were separated from him and they went away to Gangotri. He, his wife and their younger daughter remained towards Hussain Nagar. At about 11:00 they were taken to camp from the house of Gadlawala. On the say of police, he went in search of remaining hidden Muslims in the area along with a gunman. At this time, Bhavani and Tiwari chased him, his call was responded by his daughter from the terrace of Gangotri and about 700 to 800 Muslims were there on the terraces. Ultimately, the Muslims were taken to camp.

All the household of this PW was robbed. Guddu and Bhavani had died. The witness has identified A-39, A-41, A-22, A-44, A-1, A-25. Guddu had died.

Instead of A-20 the witness has identified A-38.

(b) CROSS-EXAMINATION OF PW-202 :

(b-1) The witness has stated about the role of A-25 and Bhavani to the effect that they have whispered something with the gunman given to the witness. But unless it is proved that what was said, it would not be proper to hold A-25 and Bhavani guilty on this evidence. It is therefore held that no evidence is

put forth through the deposition of this witness to prove the guilt of A-25 and Bhavani beyond reasonable doubt.

(b-2) The witness as has stated in the cross is only 4th standard passed. The veracity of the witness has been examined by the cross examiner, but there does not seems to have brought on record any evidence which can effectively challenge the credibility of the witness.

(b-3) The overall impression of the witness is, he has passed the test of probability and there is nothing to be doubted about the version of the witness.

(b-4) The witness cannot be doubted on the point that even though he met the highest dignitaries like P.M., President of Congress etc. at the camp why he did not file his complaint. It is to be understood that when the witnesses were trying very hard for their own personal security and for the safety of their families and when they have become suddenly penniless and were tremendously frightened, they may not give priority to filing complaint.

(b-5) The witness is residing since last 48 years in the area and is since acquainted with everything and since the named accused belong to the same area, there is no chance of any mistaken identity nor such points have been shown.

(b-6) At para 25, 26 and 27 it is becoming clear that the witness was on the naka of Chetandas Chawl.

(b-7) At para 37 the witness has denied the suggestion

that the mobs came in the morning and more particularly the men of the mob who were burning shops, houses and human beings did not come to the Chawl of the witness. He has volunteered that they came up to Hussain Nagar lane No.3.

(b-8) Para 39 is revealing the horrible plight of the victims of the crime, who were feeling that there position was like mad dog, the police was beating badly and because of the fear we were thrown here to there.

(b-9) At para 64 the omissions is attempted to shown from the cross examination which the witness has replied. The witness has stated that since in the cross examination I have been asked in specific as to where I was standing, I have replied accordingly, but before that, since this specification was not asked to me I had no occasion to reply. Such cross examination certainly does not bring any favour to accused.

(b-10) Para 67 reconfirms the genuineness in the testimony of the witness wherein the witness repeats that the mob was going to attack the Muslim chawls and the leaders of the mob were seen by the witness.

This also shows the opportunities and possibilities for the witness to see and to observe the accused.

(b-11) At para 69 the witness clarifies that A-22 and A-39 were attacking on Nurani, A-44 and Guddu were on Krishna Nagar side and the remaining named accused viz. A-41, A-1, A-20 and A-25 were towards ST Workshop. This has been revealed in the cross examination. A-20 has not been identified

hence benefit.

(b-12) At para 70 the witness has been confronted on the fact that how many stones were thrown by A-22 and A-39 on Nurani Masjid. It seems that practically it is impossible to count the stones thrown by the accused in such terrific situation.

(b-13) At para 75 it is getting confirmed that the witness has also identified the named accused while the mob came near Ice Factory. This also shows the chance to the witness to observe the presence of the named accused near the crime scene.

(b-14) Para 77 to 80 and 84 are related to the statement of 2002, hence is not relevant.

(b-15) Para 82 highlights an important factual position wherein it is suggested and admitted that Bhavani resided at the end of the Jawan Nagar and Tiwari resided at Gangotri society. The end of the Jawan nagar and Gangotri is one and the same place. This shows that the accused residing in Gangotri society are indeed residing in the same locality.

(b-16) At para 91 in the last 2 lines, the witness has very very specifically stated that all the accused in fact belong to his own area and he new them very well. This is establishing the prior acquaintance of all the accused with the victim.

(b-17) At para 102 the witness explains that how cross stone pelting was initiated. As is explained by the witness,

originally Hindus have started stone pelting, when the attack on Nurani started the cross stone pelting started.

(b-18) It is not very material whether the witness has stated anything in the T.V. or to Press or not. In fact it is not proved that the witness has given any kind of interview.

(b-19) Para 107 proves that the Chetandas Chawl mentioned by the witness was on the road where there was small Hotel as well.

In view of the foregoing discussion there is absolutely no material on record to believe that the witness is not natural and not credible. The witness appears to be natural, credible and the witness of truth.

(b-20) The witness is resident of the area for about 48 years, has continued inhabiting in this area only, he has not identified A-20 correctly. There is no material or no adverse observation of this Court because of which it can be believed that because of some negative effect or because of some situation created or gesture of A-20, the witness could not identify him hence seems proper to hold that through this witness no case stands proved against A-20 as his presence becomes doubtful qua the testimony of this witness. A-38 was not named by the witness, hence no question of holding him guilty as far as the oral evidence of this witness is concerned. As discussed nothing stands proved against Bhavani and A-25 through this witness.

In nutshell, the case stands proved against A-1, A-

22, A-39, A-41 and A-44 and Guddu.

(c) FINDING OF PW-202 :

(c-1) The presence and participation of A-1, A-22, A-39, A-41 and A-44 and deceased Guddu stands proved in the morning occurrence beyond all reasonable doubt.

(c-2) Police firing stands proved through this witness in the morning occurrence.

(c-3) The PW is an eyewitness of some part of the evening occurrence.

(c-4) Benefit of doubt to A-20, A-25 and Bhawani is granted qua the PW.

60. PW-203 :

(a) This witness is mother of deceased Sharif Iqbal, the gist of her version before the Court in the chief-examination is as under.

"At 09:00 a.m., I was taking tea at my home alongwith family, at this time, there was hue and cry in our chawl and people were running here and there saying 'mob has come, mob has come'.

At about 9:30 am, we climbed up the terrace of one master residing opposite my house, upon seeing from terrace, there was fire in Nurani Masjid, burning of rickshaw wooden

cabin by the men of the mob. Seeing all these, we came down from terrace where we learnt that mob from Hussain Nagar is coming screaming, 'Kill & Cut'. The men of the mob has sword, hockey, stick and tins of petrol and kerosene, they wore vest (undershirt) and have had saffron belt on the forehead.

Since the mob was coming to us, we ran away to SRP and requested them to save us, who in turn told us, it is your turn to die today, hence die going at your home. Then after we slavishly request the SRP to take our children and women inside, but they have beaten us with wooden stick.

Then after at this time, since the mob was following us, we went to Gangotri and Gopinath to save ourselves from the mob where I and my husband parted, my children were with me.

We reached upto the house of Bhavani, at that time, my son, Sharif was also parted from me, we went to terrace of Gangotri and pressed the mouth of our children since they were crying. We then after hidden ourselves on the terrace.

When we were hidden in terrace, the screaming of 'Kill & cut' were heard. At that time, while seeing from the cement net on the terrace, I saw my son, Sharif was being beaten and fallen down by blow of sword, hockey and wooden stick then after pouring kerosene and petrol on him, he was burnt alive.

In the mob which was beating and burning my son, I saw Bhavani, Guddu, and Dalpat, Suresh (A-22), Shehzad (A-

26), Tiniyo (A-55), Kishan Marathi (A-48) and A-40 son of Bhavani and others. This mob was also throwing small children in the burning fire. This mob was also raping the girls. I also saw this mob to have raped wife of Naim at about 5:00 to 6:00 pm, I was on the terrace upto 12:00 night when the police vehicle came to pick us up, but I was not afraid, we went to camp where my husband also met me who was injured, my other children were also injured.

For the panchnama of my house, my husband came. We had loss of about Rs.2 lacs."

The witness has named the above referred accused, but she has identified A-26 and A-55 as the persons from the mob who have beaten and then burnt her son, Sharif Iqbal. A-22, A-40 & A-48 were not identified.

(b) CROSS-EXAMINATION OF PW-203 :

(b-1) The witness has been confronted on topography of the site and on the part of statement before the SIT wherein it is contended that "Whatever is stated in earlier statement is true and correct. Both these aspects have been dealt with in Part-2 of the Judgement as this is common question to all the witnesses. To avoid repetition, it has not been opined again here, but from such replies, the credibility of the witness can never be shaken.

(b-2) At paragraph 36, the witness has complained about the police and previous investigation.

(b-3) The witness has been crossed on the population of Gopinath Society and S.R.P. Quarters, but it is not necessary for every witness to know about the number of people residing in that particular area when witness is talking something about that area. No substance is found in this cross.

(b-4) The witness is consistence on the fact that she is an eyewitness of the murder of Sharif which as emerges she has also told in statement of of the year 2002.

(b-5) The witness has confirmed the time of the incident of Sharif in between 05:00 p.m. to 06:00 p.m., at paragraph 51, the witness has stated that they all were beating Sharif. This is all tallying with version of PW 37.

(b-6) It is true that the witness is not able to say the site where Sharif was beaten, but the witness being Muslim woman, might not have been that acquainted with the site, but that fact does not mean that she is not an eyewitness.

(b-7) The witness has identified A-26 and A-55, as a members of the mob which has beaten and then killed Sharif by burning him at the site. Though she has named other accused, as were present, but she has identified the two, hence the involvement, presence and participation of A-26 and A-55 can safely be believed. No TIP for other accused hence, benefit to all of them.

(b-8) This witness is tallying with the version of PW 37 and that considering the said fact, it becomes clear that the mob which has beaten and burnt Sharif alive was a mob of

Hindus wherein A-22, A-44, Guddu, Dalpat and Bhavani (as per PW 37) and A-26 and A-55 (as per this witness) were involved.

When the incident is taking place on such a large scale and when the mob is of too many persons, it is very much possible that one PW sees some accused in the same occurrence, whereas another witness see some other accused in the same occurrence. Hence it is possible that PW-37 has seen the named and identified 5 accused and this witness has seen two of the identified accused which would mean that all the 7 were present in the mob which has killed Sharif and all of them are responsible for the death of Sharif.

(b-9) Paragraph 40 of the cross-examination reveals the suggestion of the defence that on that day, a large mob from all the four sides were coming with open swords and screaming "Kill, Cut" and because of fear the witness has left their house alongwith the family.

This is suggested by the defence, which proves the prosecution case.

(b-10) At paragraph 41, it is admitted that son Sharif of the witness was beaten by the mob with pipe and upon his falling down,he was burnt by pouring petrol on him.

This suggestion from the defence also is supporting the prosecution case supported and proved by PW 37.

(b-11) At paragraph 43, the witness has specified that those who were residing at Gangotri, Gopinath and SRP

Quarters were known to her since they were passing from her house.

(b-12) At paragraph 49, the witness has confirmed the place of the occurrence to be beyond the house of Bhavani. This is exactly proving the prosecution case.

(b-13) At paragraph 51, it is becoming clear in the cross-examination that all the accused were in possession of deadly weapons. This is also proving the prosecution case.

(b-14) At paragraph 52 and 53, the witness volunteers that she has seen Sharif being beaten and then burnt. It is also stated that after beating Sharif, he was burnt there itself.

The witness clarified that she has witnessed the incident from the cement-net on the terrace which seems to be quite probable.

(b-15) It is true that as stated in paragraph 26, the witness has no other concern with Bhavani, Guddu and Dalpat, in fact this shows that false involvement of the accused by the witness is just to be ruled out. At paragraph 63, she states that she has identified the accused from the terrace which is quite probable.

(b-16) At paragraph 78, a suggestion has been asked as to whether there is temple in the house of A-26 or not. This suggestion itself shows that the defence accepts that the witness was knowing A-26 so well.

(b-17) PW 327 has been asked an omission in the statement

of the witness by asking that she has not stated before the SIT about the word net of terrace for seeing the incident of Sharif. As a matter of fact, the witness did state that she has seen the incident of killing Sharif from the terrace and not from the net of the terrace. The omission of the word net is no omission at all. It is most immaterial whether the word net is used or not. It is important that she has even stated before the SIT that she has seen the murder of Sharif from the terrace and that is satisfactory and sufficient. In fact, this shows that the witness is very natural and not a tuitored witness. Considering the omission to be most immaterial, no effect of such one word can be given on the credibility of the witness.

(c) OPINION :

The PW proves her damages. She is an eyewitness of rape scenes and involvement of the mob in committing rape on Zarina, wife of PW-158 in the evening occurrence. As far as homicidal death of Sharif is concerned, the PW ideitifies A-26, A-55 and mentioned deceased Dalpat, Bhawani and Guddu to have been involved in the crime, hence, they are held to have been involved. As far as rape scene and rape on Zarina are concerned, she mentions the word 'same mob' but, she does not identify or specify names of any of the accused for this crime, hence, from the general statement, specific accused cannot be held to have been involved hence, the ideitified or named accused are not held to have been involved in offence of rape beyond doubt. However, it is clear that the rape scene and the rape on Zarina stand proved to have been committed beyond reasonable doubt in the evening occurrence.

The witness is real mother of deceased Sharif, witnessed the incident of Sharif from the cement-net of terrace. This is quite probable, there is nothing on record to believe that the witness is not a witness of truth rather she seems to be natural witness and there is nothing to discredit this witness who clearly seems to have witnessed the incident of murder of her own son Sharif Iqbal.

It is therefore held that the homicidal death of Sharif took place near Gopinath, Gangotri society, on the date, time and place of occurrence in the evening incident. It is testified that, the five accused named by PW 37 and the two accused named by this witness viz. A-22, A-44, A-26, A-55 and deceased, Guddu, Dalpat, Bhavani were present who have participated in the murder of Sharif by firstly beating him and then after torching him alive. The PW has identified only A-26 and A-55. The PW has not identified A-22, A-48 and A-40 and has only named them. No TIP for them, hence, benefit of doubt to A-22, A-48 and A-40.

(d) FINDING OF PW-203 :

(d-1) The homicidal death of Sharif stands proved beyond reasonable doubt to have been committed by the A-26, A-55, Dalpat, Guddu and Bhawani in the evening occurrence.

(d-2) A-22, A-40 & A-48 have been granted benefit of doubt qua this PW.

(d-3) The PW suffered damages.

(d-4) PW is an eyewitness to rape scenes. She is also eye witness of rape on Zarina (PW-205), wife of PW 158 in the evening occurrence.

61. PW-204 :

(a) The gist of the examination-in-chief of the PW is as under :

The witness is residing in Naroda Patia since last 30 to 35 years, he gives deposition on morning incident, he deposes that A-41 and A-20 were doing firing respectively by rifle and pistol, he has seen the mob pelting stones and burning Muslim houses on the road, the witness took shelter at the terrace of Pinjara, he has identified A-20 properly whereas did not identify A-41 but has identified A-2 instead.

(b) CROSS-EXAMINATION OF PW-204 :

(b-1) At para 12 the witness has stated that he knows A-41 before 10 years of the occurrence and he knows A-20 before 2 years of occurrence. This statement is made by the witness with a prefix statement that he knows the accused from previously which is clarifying that the witness is having someone in the mind as, A-41.

This statement in fact very clearly establishes on record prior acquaintance of the witness with both the named accused. In such situation it cannot be believed that the witness would not be in a position to identify A-41 to whom he knows for last 10 years. A-41 belongs to the same area, is

popular in the area and known with his business name, therefore also no chance of not identifying A-41 but the fact remains that the PW instead of A-41, identifies A-2. There may be fear in the mind of the witness for A-41 or may be anything else, but in any case the PW has not identified him and there was no TIP, hence A-41 deserves benefit.

(b-2) Exh.1412 is the printed form for which the witness has disown the contents except his signature, hence the cross examination on the said need not be considered. The fact remains that the witness disown the contents wherein the involvement of Guddu, Bipin, Manoj, Bhavani, Tiwari and Suresh Chhara has been contended.

At para 21 the witness has clarified that he has hardly studied upto 2nd Standard and he does not know reasonable good Gujarati or even Hindi. This needs to be kept in mind.

(b-3) At para 33, the witness explains about the uniform mechanical sentence of the SIT statement. The PW states that the two previous statements whether are of him or not was not understood by him. He adds, some papers were read before him, before writing statement but he has not understood anything.

This illustration shows the uniform sentence is too mechanical and has no meaning when the witness does not understand anything. Such uniform sentences are formal in its nature hence without bothering much such sentences are written in its usual course. Moreover, the alleged statement of

the witnesses are of the year 2002, wherein there is bound to be mixture of genuine version of the witness and the desire of previous investigator 'to focus some accused and to defocus another'.

(b-4) Para 33 and 35 if read together clarifies how formal and meaningless the uniform sentence is wherein the illiterate witness does not understand anything.

(b-5) Para 37 relates to topography, many paras relates to statement of 2002, some paras are based on panchnama of the residence of the witness, but none of it put up on record any case by which the veracity of the witness becomes doubtful.

(b-6) At para 75 the witness admits that he does not understand the difference between revolver and pistol. This reply shows how natural the witness is. No layman can ever have an understanding about the difference between pistol and revolver.

In the opinion of this Court when rustic witness speaks he cannot be cut word by word. The spirit of his version is to be seen and in this case he only wanted to say that both the accused had firearms in their hands on that day.

(b-7) If testimony of PW 327 at para 654 and 655 is perused, it is clarified that the contents of para 4 and 5 of the examination in chief stated by the witness before this Court were told before the SIT also, only the words were different, hence there is no material omission while comparing the version before the court and the statement before the SIT.

(b-8) PW 327 has admitted in the cross that he has not recovered revolver from A-20 or A-41. This admission has no meaning when the SIT has investigated after about 8 years of the occurrence.

(b-9) Several PW have stated on private firing. There is no reason to disbelieve injured, eyewitness, complainant.

(b-10) The first IO has not investigated on the aspect of firing but the benefit of it cannot go to the accused when A-18 has also confessed in the sting about collection of 23 firearms.

It is therefore clear that the firearms were possessed and private firing was done by A-20 as stands proved beyond reasonable doubt.

(c) FINDING OF PW-204 :

(c-1) The presence and participation of A-20 stands proved in the morning occurrence beyond reasonable doubt, possessing and using firearm as private firing was done on that day.

(c-2) A-41 is granted benefit of doubt qua this PW.

62. PW-209 :

(a) The gist of the examination in chief of the PW is as under :

This witness is an injured eyewitness of the *khancha* incidents or call it evening occurrence. This witness states about they had been to different places throughout the day and mainly about the *khancha* incident. She deposes that, "At about 5:00 or 5:30 Bhavani and A-28 met me outside the hall. They have tempted us to vacate the hall advancing the cause that security arrangement for us was made, hence we came out, we went towards Teesra Kuva, there we saw a big mob with weapons, seeing this, I, my mother etc. were returning. At this time, the Muslims left behind us were being beaten by another mob near Gopinath and Gangotri society, seeing this we entered in one *khancha* which was between Gangotri and Gopinath society where there was one water tank. We all were separated here, but in the *khancha*, I, my mother, my sister Nasim and my brother Raja were together.

In the *khancha* there was a mob which has cordoned us. In this mob, I saw A-22, A-60, A-40, A-1, A-10, A-28, Bhavani, Dalpat, Guddu, two Marathi boys and many other persons.

Here, one boy named Siddique was attacked, killed and burnt.

My sister Nasim was also attacked by pipe blow on her head and burnt here, she died here, as Siddique also died here.

Seeing this, my mother was screaming and was running away, but A-22 caught hold of my mother and gave her gupti blow in her stomach, then the mob has burnt my mother

who also died here itself.”

The witness has identified A-1, A-10, A-22, A-28, A-40, A-53 and A-60. Bhavani, Dalpat and Guddu had died. She has identified all these persons as members of the mob. A-53 was identified in T.I. Parade at Exh.246, which has been held to be successful T.I. Parade was in presence of PW 34.

(b) CROSS EXAMINATION OF PW-209 :

(b-1) The witness is absolutely illiterate.

(b-2) In the *khancha* the mob has burnt many Muslims alive.

(b-3) It is true that in the camp, media persons, NGO, camp organizers, press etc. were visiting, but the witness has not filed any complaint. It needs to be understood that, at that point of time, the mental state of the witness cannot be such wherein their priority could be to file the complaint instead of bothering for their security.

(b-4) The cross examination on application given to SIT, statement of the year 2002, topography, uniform sentence of SIT etc. have been dealt with at Part-2 of the judgment.

(b-5) It is submitted that the admission of the witness that she has jumped the coat of more height than that of the witness herself is unbelievable. It has to be kept in mind that everything is probable and every miracle can happen when there is hanging sword of death. This Court is not surprised or

this court do not find the witness liar on this count. It is held to be probable.

(b-6) All the cross examination on probability and challenging the veracity of the witness are not found impressive enough to disbelieve the witness.

(b-7) The suggestion of the witness to be tuitored by NGO or by the community persons is not found of any worth in the fact circumstances of the case.

(b-8) Not only in the *khancha* but even outside the *khancha* also Muslims were killed.

(b-9) Para 136 brings on record the time of the *khancha* occurrence to be 6.00 or 6.30 p.m. and the fact that the witness and other Muslims were sandwiched in the mob towards the direction of Nurani and from the direction of Teesra Kuva.

These are the two directions of east and west. Out of the remaining two sides, on one side there is continuous long wall of ST Workshop, whereas, on the other side, the site of the offence is situated. Thus, for the victims, the way to escape was either in east or in west, but they were cordoned from both the sides. Therefore, in fact, the victims at the *khancha* occurrence had no way to come out of the situation, except jumping the wall.

(b-10) In the SIT statement, this witness has specified that she has informed the previous investigator all details including name, acts of the accused, but the police did not write it. It is

believed by the Court as, previous investigators are found to be unreliable.

(b-11) At para-33, 34, 149 and 105, the prior acquaintance of A-53 is clearly emerging. Moreover, the witness has also identified A-53 in T.I. Parade.

The defence that because of enmity against A-53 for not selling the house of him to the witness he has been falsely roped seems to be the suggestion for the sake of the suggestion as no document is shown to the witness or no document is produced on the record to show that A-53 had house on his name in the locality where the witness resides. However, it is notable that even this suggestion also, in fact, base prior acquaintance with A-53, hence submissions on T.I. Parade fades out.

(b-12) At para 146 and 147, the witness has stated that as far as Guddu, Dalpat and Bhavani are concerned she knew all the three quite well. On asking in the cross, she has also stated that the Hindus who reside in Gopinath or Gangotri society, known to the PW by seeing them well.

(b-13) As far as A-1, 10, 22, 28, 40 and 60 are concerned, it is a matter of record that all of them and the PW are residing in the same locality and that, the inference of their prior acquaintance can easily be drawn by the court.

(b-14) Upon perusal of testimony of IO of SIT PW 327, from para 659 onwards, it seems that there is also the uniform mechanical sentence in the statement of SIT. Now, as far as,

this witness viz. PW 209 is concerned, as has been clarified in the note by the Court below para 164 and as has been noted in the testimony of PW 209, this witness has given a specific statement before the SIT to the effect that in her statement dated 11/05/2002, this witness has given name of the accused and has given other details before the police in the year 2002 stating as to who has burnt her mother and sister, but still, however, the police has not written all these things in her statement.

The point to be pondered over is whether the witness who has stated or who has voiced grievances against the previous investigating agency can state that whatever was written by the previous investigating agency was true and correct.

This is apparently found to be impossible as the witness who is vigilant enough to voice her grievance against the previous investigator before the SIT cannot say that for the statement for which she has voiced her grievance was true and correct.

The above situation creates doubt on the truth in the statement viz. this part of the statement recorded by SIT. Hence, to the said extent the SIT statement has remained doubtful otherwise there is nothing to be doubted about the SIT statement.

(c) FINDING OF PW-209 :

(c-1) Presence and participation of A-1, A-10, A-22, A-28,

A-40, A-53, A-60, Bhavani, Dalpat and Guddu stands proved beyond all reasonable doubt in the evening occurrence / water tank occurrence / *khancha* occurrence.

(c-2) This witness is the eyewitness of homicidal death of Siddique who was burnt after giving pipe blow in the evening occurrence.

(c-3) The homicidal death of younger sister of PW, Nasim stands proved who was given pipe blow on her head and then was burnt at the site in the evening occurrence.

(c-4) The homicidal death of the mother of the PW Zarinaben stand proved as A-22 has given gupti blow in her stomach and the mob then after has burnt her in the evening occurrence.

(c-5) A-53 was identified in T.I. Parade panchnama at Exh.246 in the presence of PW 36 by the witness.

63. PW-212 :

(a) The gist of the examination in chief of the PW is as under :

This witness is sister of PW 209. The witness has seen some part of the evening occurrence of *khancha*, wherein, she has seen homicidal death of her mother and after seeing the incident of mother, she ran away from the site and went inside some lane nearby.

This witness was together with her sister, mother etc., but after coming out from the hall she was separated. While coming out from the hall, she has seen that Bhavani has given signal to the mob of Hindus on the side of Nurani Masjid (on the western side) to come down. After this, the witness went towards Teesra Kuva but having seen the mob with weapon on the way to kuva, she came back. The witness was frightened too much running there she saw that A-22 has given gupti blow in the stomach of her mother and that in this mob there was A-1, A-10, A-22, Guddu, Bhavani, A-40, Dalpat, A-60, A-61 and A-31. After this, she ran away and went to the terrace, she has seen the burning houses, dead bodies and burnt bodies on the way. The witness has identified A-60, A-22, A-31, A-1, A-10, A-61 and A-40. She has also deposed that Bhavani, Guddu and Dalpat had died.

(b) CROSS EXAMINATION OF PW-212 :

(b-1) At para-9, the witness has stated about having seen all the named accused at the *khancha* occurrence. If para 9 is read with para 63, para-92 and para-94, it becomes clear that the witness admits that when she has seen the homicidal death of her mother nobody has tried to kill her for which she explains that because she ran away in the lane.

At para-92, she states that the attack on her mother was seen by her since she, turned around. Just because, the PW who was young in age, could manage her escape, it cannot be concluded that it was not probable for her to see the attack. It seems that, the PW could see the attack as, she was present at the site, but, since she could manage to run away, her life was

saved.

Para-94 clarifies that the witness has seen the attack on her mother by gupti blow, but she could not wait to verify whether her mother fall down there itself or not. This is quite natural. If all these points are collectively seen, it is becoming clear that there is no doubt that the witness did see the attack on her mother at the *khancha* who was given a gupti blow by A-22. When she saw this, it is probable for her to even see A-1, A-10 and Guddu who were there (Para-9), hence it can be accepted that the witness also must have seen A-1, A-10 and Guddu along with A-22, but since the witness was running and has seen the occurrence by turning around and since she ran away inside the lane, it cannot be believed and it does not seem probable that the other accused she has named viz. A-61, A-40, Dalpat, A-60 and A-31 also might have been seen by her, hence the presence of A-61, A-40, A-60, A-31 and Dalpat, through the PW is not held to have been proved beyond reasonable doubt. it is doubtful that, when A-1, A-10, A-22 and Guddu were only together and when the PW noticed the attack while she was running whether she can also notice A-61, A-40, A-31, A-60 and Dalpat who were not in that group which has attacked the mother of the PW. This Court opines that it is not probable hence, benefit to A-61, A-40, A-60, A-31 and Dalpat qua the PW.

(b-2) At para 65 this witness has been questioned as to whether she had to jump the wall to go to Gangotri or not. The witness has denied to have any need of jumping the wall.

This reply cannot be equated with the reply given by PW 209 who had jumped the wall to go to Gangotri because if

the routes chosen by both the sisters are different then such thing is not improbable, hence no doubt is raised in the mind of the court on this aspect.

(b-3) At para 35 the defence has asked a question as to whether the named accused were coming to play cricket in the Jawan Nagar khada. This suggestion itself is revealing the prior acquaintance between the accused and the witness. The witness did admit A-22 and A-31 to have been coming at Jawan Nagar khada to play cricket.

(b-4) At para 94, the witness has stated that, “the accused to whom I have seen in the mob are known to me by seeing them.” This part of the version of the witness link with the inference of prior acquaintance between the named accused and the witness since all of them are admittedly residing in the same locality.

(b-5) The usual cross on SIT application, topography, statement of 2002, uniform sentence of SIT, the version of the witness to be a tutored version, false involvement of the accused, the involvement is on account of enmity with the accused etc. have not been found effective defence and the reply given by the witness are not at all proving any probability in the defence raised.

(b-6) At para 112, it is suggested that A-22 is falsely involved because of the enmity between the brother-in-law of the witness and the accused. But, this does not seems to be correct as the version of PW 209 tallies with the version of this witness which satisfies the element of probability of the

occurrence.

In the opinion of this Court, even this suggestion like the suggestion at para 35 proves prior acquaintance of A-22 and the witness.

(b-7) While perusing the testimony of PW 327, the IO of the SIT, it seems that the omission suggested at para 5 & 8 is not material omission at all. It is not important that from which route the witness came to Gangotri. There can be difference in observation. There is no incriminating contents as well.

It is true that the part of the statement referred at para 104 was stated by the witness before the SIT, but the same is related to the para of damages and that this witness has not been examined as the witness of damages. Considering the said vital fact, this omission is also no omission in the eyes of law.

(b-8) Bhawani was a neighbour of the PW, he gave signals to the mob and remained present at the site in the evening, hence, is found involved.

(b-9) At para 41 the witness has stated that she does not know the full name of father-in-law of the brother. In light of the fact that the brother and the witness are Muslims and the suggested father-in-law is Hindu and when the witness states that they do not have relation at all and since the witness is a Muslim woman it is not found to be improbable if, the witness says that she has no knowledge about the full name viz. first name, father's name, surname and the alias surname of the

father-in-law of the brother who is Hindu. It is probable in the facts and circumstances of the marriage of the brother with Hindu Bhabhi of the witness.

(b-10) This witness like PW 209 has stated in the cross that the mob came from Nurani as well as from Teesra Kuva.

At para 93 the suggestion put forth by the defence itself is based on the fact that the mobs were two in number.

Overall, the PW is truthful and except the parts mentioned in above, for other parts, she is credible. She involves Bhawani, A-1, A-10, A-22 and Guddu in the evening occurrence.

(c) FINDING OF PW-212 :

(c-1) The presence and participation of A-61, 40, Dalpat A-60 and 31 is doubtful who are entitled to be given benefit of doubt qua this witness.

(c-2) The homicidal death of mother of the witness by gupti blow, by A-22, at the site of *khancha* or evening occurrence stands proved beyond all reasonable doubt, where presence and participation of A-22, A-1, A-10 and Guddu stands proved.

(c-3) The presence and participation of Bhawani stands proved in the evening occurrence.

64. PW-213 :

(a) The gist of the examination in chief of the PW is as under :

This witness was accused of Ranjit murder case which was Sessions Case 241 and 242 of 2003, the judgment in that case has acquitted the PW by giving benefit of doubt. The judgment of S.C. No.241 & 242 of 2003 is on record at Exh. 1532.

This witness is the eye-witness of the morning incident where he has seen A-44 with revolver and sword, Guddu with scythe, A-33 with sword, A-22 with pipe, A-51 with gas cylinder as leaders of the mobs. This witness is also eye-witness of police firing.

This witness is also eyewitness of noon incidents which took place after morning incident at Nurani when the mob came to Muslim chawls.

According to this witness, the incident of Aiyub viz. burning Aiyub has taken place, wherein, A-44, Guddu and Bhavani were involved.

The witness was to inaugurate his own Pan Galla at Hussain Nagar, Street No.3 on that day.

He has identified A-22, A-33, A-44, A-51 and has stated that Bhavani and Guddu had died.

(b) CROSS-EXAMINATION OF PW-213 :

(b-1) It is clear that the PW is an eyewitness of the occurrence. Even if he was accused in some case, his oral evidence in this case cannot be doubted except where link between the two has been successfully joined. Throughout the cross, such link has not been established.

At para 125 it stands confirmed by PW 327 that witness has stated before SIT that while running away when a boy named Aiyub jumped, he has sustained fracture, as against this statement before SIT the witness has stated before Court at para 19 that while shoving and pushing one another, Aiyub fell down from the terrace.

As confirmed by PW 327, the contents mentioned at para 21 have been omitted to be stated before SIT. This in the humble opinion of the court is material omission as it would reveal as to from which place the witness has seen the incident of Aiyub. The witness has not said the same before SIT. In view of the material difference between the version before the court and the statement before the SIT, this court is not ready to believe the version of the occurrence of Aiyub as stated by the witness as it creates reasonable doubt.

This witness is involving A-44, Guddu and Bhavani in the occurrence of Aiyub. Considering the fact that the incident of Aiyub as stated by this witness does not sound to be credible one, the three accused viz. A-44, Guddu and Bhavani are entitled to benefit qua the incident of Aiyub.

(b-2) The time factor at para 116 cannot be said to be

serious material omission as it does not change the nature of the occurrence. As has been revealed in the cross examination at para 116 that the witness has studied only upto 5th standard, hence sense of exact time cannot be expected from the witness. Considering which, this contradiction is held to be not material contradiction on which is incriminating in nature, hence the said is not held to be a valid contradiction.

(b-3) In view of the statement of PW 327 at para 665 it stands proved that the witness has stated before SIT the timing of Shri Parikh's incident at 5:30 or 6:00 and in the version before the court it is said to be 4:00 to 5:00.

Even this is not material contradiction as such difference in time is common. The contradiction can be from morning to evening viz. before SIT if, it is stated morning and before the Court if, it is stated evening. This is not the material contradiction, hence not given any importance.

It is different that this Court believes that Shri K.P. Parikh seems to have been performing his lawful duty of securing the premises of SRP Quarters and while performing his official duty, if he has attempted to restrain the witness from entering into the SRP Quarters he has not committed any wrong with any mens rea.

(b-4) The common suggestion made that since the Appeal against the judgment of Ranjit murder case is pending, the accused have been falsely involved to bring pressure on them is not at all realistic or practical suggestion which sounds to be absolutely baseless. The pressure can only be brought on the

accused if accused are the complainant and if accused are the appellant or dear and near of the appellant. Without such fact the pressure theory cannot be held to be a valid defence.

(b-5) Para 133 and 134 reveals that there is prior acquaintance of A-51 with the witness.

Para 109 to 112 and 134 reveals prior acquaintance. In fact, all the named accused are resident of the same area and or are doing their business in the same area, hence in any case there is inference of prior acquaintance.

(b-6) The suggestion at para 134 cannot be believed unless it is shown that the complaint of A-44 was prior wherein he has named the witness and then the witness has filed his statement or complaints. Nothing such things have been shown on record to the witness or in any manner brought on the record.

(b-7) Para 63 is important wherein the witness has clarified that the recording of the SIT was while the statement was being read over which shows that there is no need of producing such recording where the statements were read over and where the witnesses are not shown to have been giving their statement.

(b-8) Exh.1531 has been brought on record which is panchnama of shop and residence of the house, but that panchnama proves the damages sustained by the witness and nothing beyond that.

(b-9) The cross on topography, SIT application Exh.1529 and on statement of the year 2002 have since been dealt with are not required to be rediscussed.

(b-10) PW has given support to the presence of PW 52 in police uniform.

(b-11) Basing upon the reply of the witness at para 68, the submission was made that though the writer of the application met the witness only in the year 2008, but still he is not remembering details of that person, how the said witness can remember as to who was in the mob.

In the opinion of this court, the accused are wrongdoer, have acted against the interest of person and property of Muslim community, they leave permanent scar on the mind of the witnesses, on account of the occurrences, economic loss has been sustained, as against that the writer of the application has met the PW to write an application to request the SIT to take down the statement which is merely ministerial kind of job done by some person. The two are incomparable.

(b-12) Except in case of A-51, there does not seem to be false involvement of any of the accused. The role ascribed to the accused, except A-51, seems to be quite genuine and probable. No exaggeration is noticed against the testimony of any accused except A-51.

(b-13) It is true that what is stated at para 43 has not been stated before SIT, but then it has to be remembered that the

said is the revelation during the cross examination hence, it cannot be termed to be omission.

(b-14) At para 84 the witness has contradicted his own version, but then the contents shown at para 84 by the defence does not reveal any material part of the statement, hence such contradiction is not material contradiction in the humble opinion of this Court.

There are no other contradiction or omission highlighted.

(b-15) The grounds advanced to contend false involvement of the accused have not been found to be impressive.

(b-16) The submission that no man can carry gas cylinder is not that impressive but, at Para-8, the mob coming from Krishnanagar has been stated by the PW to have been coming by torching the roadside chawls and dwelling houses and at Para-109, A-51 is shown in the mob of Krishnanagar, who, according to the PW (at Para-9), was carrying gas cylinder. At Para 134, A-51 was bringing gas cylinder by rolling it by his kicks. Torching, bringing gas cylinder in that among numerous men of mob, getting away for it and that too, rolling are all, most improbable. Common reason does not accept it hence, benefit to A-51.

(b-17) Barring the contradiction and material omission discussed hereinabove the remaining part of the version before the court which is consistent with his earlier statement of SIT. This witness is found credible witness wherever needed

necessary scrutiny was done by this Court. There is nothing on record to discard the whole testimony of the PW.

(c) FINDING OF PW-213 :

(c-1) This witness is eyewitness of morning occurrence, he proves presence and participation of A-44, Guddu, A-33 and A-22 with different weapons who were leaders of the mob beyond any doubt.

(c-2) The witness is also eye-witness of noon incidents at Muslim chawls.

(c-3) The witness has seen police firing in the morning incident.

(c-4) The occurrence of the Aiyub as stated by this witness is not stated to have been proved beyond reasonable doubt wherein presence and participation of A-44, Guddu and Bhavani have not been proved hence, granted benefit of doubt to the three qua the PW.

(c-5) Benefit of doubt is granted to A-51.

(c-6) The PW has suffered damages at his house and shop.

65. PW-217 & PW-218 :

(a-1) These two witnesses are brothers who were residing in the same house at the time of the occurrence. Their father, Rahimbhai Shaikh has filed one complaint wherein the name of

the complainant is typed which is in fact, name of PW 217, hence mechanically the statement of PW 217 was taken by the previous investigator. Had even the complaint been read, it would have come to the notice of the previous investigator that they are not recording the statement of the complainant, but of the son of the complainant.

(a-2) The father of the complainant, Rahimbhai Shaikh has in fact been not examined by the prosecution nor his statement was recorded. This complainant Rahim Shaikh has stated about homicidal death of his wife Rabiya by pouring kerosene and burning her alive as a result of preplanning amongst the accused and the presence and participation of many of the accused including A-52 has been contended in this complaint application dated 20/03/2002.

This has been placed in record of C-Summary of C.R.No.111/02 which was originally sent to the Police Commissioner who in turn sent it to the Police Station. This is on record vide Exh.1776/1 brought from the Court of Learned Metropolitan Magistrate. Here it is worthy to be noted that for the reasons not known, the complaint of this Rahim Shaikh has not come on the record which has contentions pointing to the allegation of criminal conspiracy hatched among the accused. In this complaint, the involvement of Guddu, Bhavani, A-1, A-10, A-22, A-18, A-41, A-44 and A-52 have been contended. This Court is aware that from this complaint, in fact nothing comes as direct evidence, but then this complaint is providing a strong circumstance a clue against all the named accused including A-52 and it is also stating about criminal conspiracy to have been hatched amongst the accused for this crime. It is

clarified that the contentions of the complaint have not been tried and tested, but then if the previous investigator would have applied their mind on the age of the complainant and contents of the complaint, it could have been understood that it is the complaint of husband of Rabiyabibi whose full name has also been mentioned hence it can safely be inferred that this complaint is in fact the complaint of Rahim Shaikh. As it may be, it is only to mention that the previous investigator could have done proper and better exercise to bring entire matter to more logical and more close to truth. This is important with reference to charge of hatching criminal conspiracy to commit the charged offences.

(a-3) PW 218 is the brother who was with the deceased mother on that day and who has seen the morning occurrence and the evening occurrence and that who is eyewitness of the attack on mother Rabiyabibi in the evening at the water tank area about 06:00 p.m. It is deposed that in this violent mob, there was Sachin (A-52) having blood stained hockey in his hand, in this massacre, the family members of the witness were separated and he and his mother were sandwiched between two mobs. Kerosene and inflammable substances were thrown from the water tank and the terraces of shops there and then the Muslims were burnt by the mobs of Hindus having weapons and where inflammable substance was poured continuously.

(a-4) Through this witness, viz. PW 218 the fact that he himself and his brother Khalid were injured in the occurrence and were given treatment at the camp comes up on the record.

(a-5) The witness has stated that the mother of the

witness has sustained head injury by pipe blow given by A-52 and the other men of the mob have killed the mother of the witness by pouring petrol, kerosene etc. and while mother was burnt and even the witness also sustained burn injuries on head, the hand of his mother slipped from his hand and they were separated at the water tank.

The witness states that he told the fact about the death of his mother to his brothers. The witness knows A-52 who had secured exemption on that day.

(b) CROSS-EXAMINATION OF PW-218 :

(b-1) The witness denies to have not stated before the SIT about the pipe blow given by A-52 to his mother, but in fact, the pipe blow to have been given by A-52 is not in the statement of SIT. This is certainly an omission.

(b-1.1) Normally, this can be considered as a notable omission, but here in the fact of the case, this is very immaterial omission as in the SIT statement, the witness has stated that he has seen A-52 amongst the men of the mob, he states that his mother Rabiyabibi was burnt and killed, continuously inflammable was poured from the water tank and the terraces of the shop situated there. The statement of 25/09/2008 given to the SIT is also extended statement of 03/07/2008. What is not in the statement is pipe blow was given by A-52. According to this Court, what has been stated before SIT is very material that the mother of the PW was injured, burnt and killed by the mob and A-52 was the member of that mob. If the very spirit of Section 149 and other such

sections is seen, it is of joint liability, hence even if it is taken that in the SIT, the witness has projected A-52 as a member of the mob which has killed his mother, then also the principle of joint liability would be invoked and the act and omission of the mob in causing homicidal death of Rabiyabibi would certainly held A-52 liable. Therefore, since liability of A-52 is satisfactory and properly fastened, in the facts of the case, this Court is of the opinion that whether it was a pipe blow or not, it becomes immaterial. Material aspect is Rabiyabibi was killed, it was homicidal death, she was killed in the occurrence, at the site of the occurrence by the violent mob with the weapon wherein A-52 was present and A-52 has participated in the crime. As far as all these facts are concerned, the witness is consistent at the SIT as well as before this Court. No inconsistency is noticed by the Court.

(b-1.2) The statement of the witness before the SIT that his brother has given complaint at the Crime Branch for death of his mother, is found to be complete truth when internal page-29 of Exh.1776/1 is perused. While considering this, it is becoming clear that the witness has rigthly not filed the complaint saying that it was not required since his elder brother, PW 217 has filed the complaint. All this is tallying with the record, hence the version of the witness cannot be doubted and that this witness is found to be absolutely truthful witness.

(b-2) At paragraph 15, the statement dated 03/07/2008 at SIT, the witness has stated that he told to his brothers including PW 217 that their mother was given pipe blow on the head and then after petrol or kerosene was sprinkled or poured on her who was burnt alive.

(b-3) As per the note in the statement dated 03/07/2008, the presence of A-52 in the violent mob alongwith hockey and the fact that the witness knows A-52 stands proved to have been said at SIT.

(b-4) If para-18 and 19 are read together, it is revealed that the witness has stated to have seen the cross stone-pelting which was for about 5 minutes.

Merely this admission does not provide any defence to the accused, it is rather showing the natural conduct of the Muslims, in the facts of that day, every person and more particularly and when are in group would first of all try to react with the fighting spirit, but in this case, as emerges from the deposition of the witness within 5 minutes, the Muslims have realised that they cannot cope up with the criminal force used by the mobs of Hindu.

(c) OBSERVATION :

(c-1) Except the pipe blow by A-52, nothing has been omitted by the witness to state before SIT. There is all similarity between SIT and the version before this Court as far as the fact of the homicidal death of the mother, the presence of the mob with weapons, the circumstance of A-52 to have remained present with the blood stained hockey (which shows his total involvement in the riot in even injuring other victims), continuous flow of inflammable from the terraces of shop and the water tank, the fact that the Muslims were burnt there and the fact that in the occurrence, his mother was killed.

(c-2) If the entire cross-examination is seen, then the role of the A-52 is not under the challenge, the weapon is under the challenge, considering which the role of A-52 remains as alleged.

(d) OPINION :

(d-1) PW 217 is brother of PW 218. PW 218 is eyewitness of the entire occurrence of homicidal death of his mother whereas PW 217 is a person who learns about the occurrence of the homicidal death of his mother from his brother while he was at terrace, but it is most noticeable point that this witness was also with his mother before the occurrence and he has seen the mob with weapon, the massacre and after the hand of his mother slipped from his hand, he went to one terrace of Gangotri and that the occurrence could not be witnessed by him but the surrounding of the occurrence, the background of the occurrence and the preparation of the occurrence were personally known even to this witness.

This witness has seen mob in the evening with weapons like pipe, swords etc. He saw people wildly and hurriedly running here and there before the evening occurrence, he himself was present there and before he went to terrace of Gangotri from this situation, he saw A-25 and Bhavani in the mob with baton. This shows presence and involvement of A-25 and Bhavani. There is no substantial challenge to this fact, on the contrary, at para-22, their presence and the place of the presence alongwith time stands proved which helps the prosecution case.

At para-24, the prior acquaintance of the witness with Bhavani and Tiwari is also on the record and even A-52 was also very well known to both the witnesses.

His evidence is hearsay only and only for the scene of death of his mother and prior to that for everything he too possessed personal knowledge.

This witness is found to be truthful and he proves the presence and participation of A-25, A-52 and Bhavani in the evening occurrence.

(d-2) This witness has stated that at the water tank, A-52 was there in the mob, he has given pipe blow, poured petrol and burnt his mother as he has so learnt from PW 218. This is all tallying with what has been stated by PW 218, thus both the brothers are corroborating each other and are involving A-52 in the occurrence beyond any reasonable doubt. Both the brothers are giving version tallying with each other, proving homicidal death of their mother.

The similarity in their versions is on the aspect of place of death of their mother, death occurred due to attack by the mob, presence of A-52 in the mob, A-52 to have given pipe blow, inflammable substance was poured and mother died due to the fatal injuries sustained by her. It is clear that except the blow by pipe, there is nothing which does not match with SIT statement of the brothers and hence there is even nothing to doubt version of PW 217.

PW 217 was also a panch witness of the panchnama Exh.1563 for the damages of the house of one Mohammad Faruq Kasambhai Saiyad which is also a proved document as the panchnama of the site of offence and of damages who is absolutely truthful witness.

The burial receipt of deceased Rabiyabibi is at EXH.2357. Homicidal death of Rabiyabibi stands proved.

(e) FINDING OF PW-217 AND PW-218 :

(e-1) The morning and evening occurrence stands proved by the witnesses beyond doubt.

(e-2.1) In the evening occurrence, presence and participation of A-52 in the homicidal death of mother Rabiyabibi of the witnesses at the water tank area stands proved beyond all reasonable doubt by PW 217 and PW 218.

(e-2.2) The presence and participation of A-25 and Bhavani stands proved in the evening occurrence with weapons at the site on the date as proved by PW 217 beyond all reasonable doubt.

(e-3) The injury sustained by PW 218 himself and his another brother, Khalid stands proved wherein they have taken treatment at the camp.

(e-4) PW-217 is also panch PW of panchnama Exh.1563.

66. PW-219 :

(a) The gist of the examination-in-chief of this witness is as under :

The witness was resident of Gali No.4, Hussain Nagar with family, her husband does private driving work of Isar Car, on 27/02/2002, she learnt about disturbances at Bapunagar, she deposes for Naroda Patiya that, "there was tremendous hue and cry, clamorous atmosphere and uproar all around on the road, on that day, at about 9:00 or 09:30 a.m. near Natraj Hotel, people were assembled who were giving slogans of 'Jay Shri Ram', they were screaming there and were burning tyre etc."

She deposed that “on 28/02/2002, I went to S.T.Workshop to purchase vegetable, at that time, I saw a big mob. The men of the mob were giving slogans of 'Kill, Cut' and 'Jay Shri Ram' who were wearing saffron belt, white buniyan and Khaki chaddi. There were some persons on vehicle and some were standing, they all had trishul, sword, petrol tins in their hands.

It was around 12 noon. This mob has attacked on Nurani and have burnt Nurani by throwing petrol, seeing all these, I returned at home. After returning home, I described to my neighbour all that what I saw, the men of the mob then were forcefully entering in our chawls. My son, Javed Hussain told me that he would return soon and I should sit here. The person entered in our chawls have burnt the houses of Muslims.

We women thought of going to police and telling the police as in the presence of police, the houses of Muslims were burnt, but the police told us 'to go inside, it is doom's day for Muslims'.

We then returned our home, then police firing took place, Muslims of our chawls started leaving their houses and going on the backside of the chawls. The men of the mob were entering our houses and shattering our households to the pieces and were bursting our gas cylinders in our houses and were stone-pelting.

The mob was burning our house and households, we were trying to reach far and far (on back sides / eastern direction of the Muslim chawls). We then have hidden in the house of pinjara, the mob was randomly burning whatever comes to their hand and were also burning live persons.

Since my son, Javed did not return, I was in tension, hence I came out from house of Pinjara where Bhavani met me, hence I told to Bhavani 'what is happening, why don't you do something'. Bhavani replied that 'he has telephoned to police and everything would be pacified'. I told Bhavanibhai when police is firing, what police is going to do. Bhavani told me in turn, don't worry, I will make you to eat 'Kari & Khichadi'. At this time, the younger daughter of Bhavani was with him. She told that 'you people are preparing 'Kari Khichadi' when someone's dies. I told her 'why do you speak like this', then both went away and I went in search of my son, Javed. At this time, there were many men of the mob, they were burning the houses, bursting the cylinders and they have reduced the

houses into ashes. To search my son, I went upto Jawan Nagar, but I could not find him, hence I was returning to house of Pinjara, I saw a big mob hence, I have hidden below the Pan Cabin.

I saw from this place that so many persons of the mob were returning and the persons of our community were running here and there. I saw the mob standing near the house of Bhavani. I saw Noori, Jadi Khala, her grand son were standing near the house of Jay Bhavani, I saw Jay Bhavani and his daughter were asking to go away everyone and were telling that if mob would come, the difficulty would increase, they have pushed out everyone outside then called the mob on the backside of their house. Jay Bhavani and his younger daughter was giving kerosene mattresses to the mob. Moreover, some of the men in the mob were also carrying kerosene.

There was Guddu, Jay Bhavani and his younger daughter, who were using this mattresses in kerosene and have burnt, Jadi Khala, Noori and Grand-son of Jadi Khala, I have also seen so many live persons were being caught and burnt by the men of the mob. Seeing this, I was very much afraid and not in myself.

The Muslims ran away to Gangotri out of fear and many of such persons were not left alive.

Where Jadi Khala, her grand-son and Noori were burnt, there was a mob. In this mob, even Suresh was present and was involved in burning the three. I know Suresh also.

I then went to the house of Pinjara in the evening. At this time, the men of the mob even entered ST Workshop. The people of ST Workshop were giving very filthy and inaudible abusing to Muslim.

Ultimately, after 01:30 a.m., police came and took us to camp. While in the camp, panchnama of my house at Gali No.4, Hussain Nagar was drawn."

This witness has correctly identified A-22 and A-56 as younger daughter of Bhavani. Bhavani and Guddu, she has named had passed away.

(b) CROSS-EXAMINATION OF PW-219 :

(b-1) The witness has revealed an undisputed fact about her that she resides at Naroda Patiya for last 15 years. At Para-82, her long stay in the area is stated to be right from her marriage. This leads to the belief that the witness would know the accused residing in her area. PW, A-56, A-22, Guddu, Bhawani are all residing in the same area hence, the PW can identify the accused and therefore, her identifying A-56 in TIP was quite common.

(b-2) It is deposed by her that she has taken refuge at the house of Pinjara which is near her house, but during the entire day, she was frequently coming out from the house of Pinjara and was going at the Nukkad of her Gali, which is very natural attitude.

The witness has clarified that when she had been to

the house of Pinjara which is in Gali No.4, in fact, the mob has already forcefully entered in Hussain Nagar Gali No.1 to 3.

(b-3) Now, the place of the evening occurrence was beyond Jawan Nagar. It was between Gangotri Society and Gopinath Society at the water tank. Where the witness has taken refuge is at Hussain Nagar Gali No.4. After this Gali No.4, there were about 5 Galis of Hussain Nagar, then comes Jawan Nagar and the Jawan Nagar has 4 Galis. In the last Gali of Jawan Nagar, on the road, where the occurrence took place, the house of Bhavani was situated where according to the prosecution case, Bhavani alongwith his children viz. A-40, A-56 and A-61 was residing.

(b-4) This witness has stated that the mob has used the gas cylinders of the Muslim houses itself to damage and destroy the houses and chawls. Many of the Muslim houses had two cylinders which were used by the mobs. This witness provides an important link to the probability factor of the damages caused to the Muslim houses by gas cylinder, the Muslim houses to have reduced to ashes, the Muslim houses to have robed and then burnt etc.

(b-5) If para-38 is appreciated in its true spirit then according to the witness, Bhavani was wolf in sheep's clothes. He was projecting himself as helper of the Muslim, but in fact he is one of the accused who played lead role in the communal riot at Naroda Patiya in doing away, burning Muslims and their properties and other offences against the Muslims. He was found pointing hidden Muslims to the violent Hindu mobs.

(b-6) The role ascribed to Suresh of using kerosene dipped mattresses, to burn Muslims, given by A-56 and Bhawani but, when it itself becomes doubtful, as discussed herein below, the role of the two viz. Guddu and A-22 also cannot be held to have been proved beyond doubt. Benefit requires to be given to both of them.

(b-7) This witness says that she saved herself taking shelter of Galla which was near the house of Bhavani. This shows she went upto the house of Bhavani which as narrated before is extremely close by to the site of evening occurrence. Thus, this witness was very close to the site of *khancha*. In the opinion of this Court, it is very probable and possible that the witness can hide herself taking shelter of Galla, may be by going below the Galla or otherwise taking shelter of the Galla.

(b-8) At Para-93, the PW admits that the Pan Galla where she was hidden is not a visible place from Jawannagar. At Para-95, the PW has admitted that on that day she has not seen the way towards water tank near Gangotri Society.

The above two points read with Para-92 show that from Galla she cannot see house of Bhawani, Jawannagar, hence, the incident near Jawannagar, can never be seen by her. According to her (Para-89), Jadi Khala was burnt opposite house of Bhawani which she was unable to see.

(b-9) Para – 87, 88, 89, 93 and 95, when read collectively, it is absolutely improbabilising the PW to see the occurrence of Jadi Khala which, according to her, took place near house of Bhawani. According to PW-158, it occurred at water tank. The

inherent improbability grants benefit to the accused named.

(b-10) From para-76, 79, it is clear that the witness is an eyewitness of the morning occurrence at Nurani between 10 to 11:00 a.m.

At para-78 she refers about firing to Khalid about 12 noon which shows that the witness has all personal knowledge about the morning occurrence which is also getting support from para-79.

(b-11) Para-80 shows that the witness was also victim when the Muslim chawls were targeted by the mob. The witness do refer counter stone-pelting by Muslims, but then as is known, nothing more can be attributed to Muslims then counter stone-pelting that too for five-seven minutes and that too not by all Muslims, by few of them. This reaction of Muslims does not provide any defence in the opinion of this Court.

(c) FINDING OF PW-219 :

(c-1) This witness is an eyewitness of the morning occurrence of Nurani and of attack on Muslim chawls during the noon occurrence.

(c-2) A-22, A-56, Guddu and Bhawani are entitled to benefit of doubt.

(c-3) Through this witness, the prosecution has brought on record the excitement, provocation against the Godhra carnage in the evening of the previous day and the use of gas

cylinders in the noon occurrence on that day.

67. PW-224 :

(a) The witness reveals during his examination-in-chief that he is an illiterate man, he resided at Jawan Nagar with family. The witness was present and has seen the morning incident at Nurani. The witness also gives accounts of the noon incident of breaking the wall of Jawan Nagar by violent mob and presence of A-22 and Guddu with swords in the mob of miscreants. The witness further deposed that the mobs was giving slogans of 'Kill Cut', it was breaking the wall, in the mob, the two accused were there, they entered into chawls of Jawan Nagar, after entering the chawl, the mobs started killing, cutting and burning people, they have burnt one Aiyub near the wall, they went to Gangotri Society.

The witness has learnt that his sister, Salima and his nephew Shahrukh aged 6 years had died in the occurrence, the house of the witness was burnt.

The witness identifies Guddu and A-22.

(b) CROSS-EXAMINATION OF PW-224 :

(b-1) There is as such no substantial challenge to the cross-examination except that the press and media was taking interview and the interview of the witness was also taken, the witness was not knowing all the persons resided in the chawl, the omissions from the statement of 2002 has been emphasised, but as has been held the statement of the year

2002 is not completely reliable as far as the recording of the statement is concerned, hence omission based on that cannot be given any weightage.

(b-2) The points on interview by the press not knowing all the members of the chawls etc. are not found impressive to provide any defence to the accused.

(b-3) The witness has replied that it is true that he has not given any complaint, but his statement itself is his complaint. One does not understand what is wrong in this reply. For a laymen, FIR, complaint and statement are all one in the same.

(b-4) During the cross also, A-22 and Guddu have been proved to have been moving with sword, this is a very vital point.

(b-5) In the cross-examination, more particularly at para-33 itself, two times the witness has given a voluntary statement very clearly proving his prior acquaintance with both the named accused, hence not holding T.I. Parade will not gain any fruit for the defence.

(c) FINDING OF PW-224 :

(c-1) Presence and participation of A-22 and Guddu stands proved beyond all reasonable doubt in the noon occurrence when the wall of Jawan Nagar was broken, slogan shouting were done, people were killed, cut and burnt in the Muslim chawls and the miscreants entered in the Muslim chawls forcefully.

(c-2) His sister Salima was burnt in the occurrence.

(c-3) The incident of the morning stands proved by the witness being an eyewitness.

68. PW-225 (Husband of Kausharbanu) :

(a) The defence wanted to depend on this PW 225 who is husband of the deceased, Kausharbanu. He is an illiterate witness who admittedly states that on the date of the occurrence, his wife Kaushar went for delivery to his-in-laws, at the house of Khalidbhai and Jainambibi, the witness after having seen the morning occurrence, went to take his wife at Hussain Nagar, at Hussain Nagar, he has seen the mob assembled which was beating and killing Muslims, the mobs were burning the houses and were giving slogans of 'Kill, Cut', the witness was afraid and went to khada of Jawan Nagar.

(b) At about 04:00 p.m. when he saw his wife and mother-in-law, the witness states that, 'my mother-in-law and wife were cordoned by the mob she was passing through 9th month of her pregnancy', the witness states that, 'he saw somebody giving sword blow and then out of fear, he ran away', later at the camp, he learnt that his wife had died.

(c) CRORSS EXAMINATION OF PW-225 AND OPINION :

(c-1) During the course of cross-examination of this witness, the witness had denied at para-20 that he was running

away from the Khada of Jawan Nagar taking his mother-in-law Jainabi and his wife Kausharbi, the witness has volunteered that he had only gone to see that, he has admitted that he has seen his wife and mother-in-law at Jawan Nagar Khada and on giving sword blow, the witness ran away.

(c-2) In the opinion of this Court, firstly this witness even according to him is not an eyewitness of any occurrence except a sword blow given to his wife, but he is not telling as to whether in the said sword blow, his wife was injured or not and that he has even not seen his wife to have been injured or fallen down at Jawan Nagar khada.

(c-3) This man admits to have ran away before even the attack was effected. This man cannot be said to be an eyewitness of the attack, resultant injury and resultant death of his wife, who does not claim that his wife was with him on that day. This Court has found that PW 158 is very reliable witness, who is an eyewitness of the death of Kausar, sword blow on Kaushar and the fact that Kaushar was then burnt at *Khancha* is seen by other witness PW 228, hence this Court is inclined to believe PW 158, PW 228 etc.

(c-4) If read line by line and even between the lines, PW 225 in no way is falsifying other witnesses rather, he clarifies that he does not know anything about the death of Kausharbanu and that he is not an eyewitness of the death of Kausharbanu or even effective and successful attack on Kausharbanu. According to him, he has seen somebody to have given sword blow at Jawan Nagar Khada, but there are so many witnesses deposing about many incidents of the noon at

the Muslim chawls, Jawan Nagar Khada etc. and when this PW 225, the husband is telling at para-8 that it was about 04:00 p.m. when he saw this attack, it is to be remembered that according to the proved prosecution case, this is the time of breaking wall of Jawan Nagar, parting khada and Jawan Nagar by the men of the mob. In such situation, frequency of the occurrence is so speedy that it cannot be believed that PW 225 admittedly at a far distance would rightly judge about the sword blow on Kaushar and even if he has rightly judged, he does not state that he has seen the blow to be successfully effected on Kausharbanu. Kausharbanu could have escape that blow or even in too much of rush, the blow aimed to be given to Kaushar could have been effected on somebody else as well, but since PW 225 did not wait even for a second, he is none to say that the sword blow was given to Kausharbanu at Jawan Nagar Khada as against eyewitnesses to state that sword blow was given, Kausharbanu was burnt and died at *Khancha*.

(c-5) It is obvious that if, the sword blow, would have been successful in such case the pregnant Kausharbanu could have been injured at Khada itself, but she was found and noticed safe while at hall in the noon, even PW 158 says that they all were together and ultimately Kausharbanu was done away at *Khancha*. If these all are seen collectively then it gives an impression that PW 225 is not a witness of result of sword blow on his wife Kausharbanu and he does not prove any attack, injury or death of Kausharbanu at Jawan Nagar Khada.

(e) FINDING OF PW-225 :

(e-1) PW 225 does not prove any attack, or any sword

blow to have been effected on his wife Kausharbanu at Jawan Nagar Khada on the date of occurrence at 4:00 p.m. beyond reasonable doubt.

(e-2) It is proved through this PW that free use of deadly weapons and causing grievous hurt upto the extent of causing death was common in the noon occurrence.

69. PW-226 :

(a) The gist of examination-in-chief of the witness is as under.

This witness is a resident of Jawan Nagar, has only studied upto hardly 2nd standard, is an eyewitness of morning incident at Nurani Masjid including the incident of firing and even incident of noon of Muslim chawls wherein the mobs have unduly entered into Muslim chawls have done ransacking burnt houses with the help of gas cylinder, the mobs to have come alongwith weapons and that in the noon occurrence, the elder brother of witness viz. Mohammad Aiyub Allabaksh Shaikh was burnt alive in the Muslim chawl.

The PW has seen Guddu, Bhavani and A-22 to whom the witness knows. Out of them, Guddu and Bhavani had died, A-22 has been identified by the witness.

(b) CROSS-EXAMINATION OF PW-226 :

(b-1) During the course of cross-examination at para-16 and 26, the fact of prior acquaintance of Guddu, Bhavani and

A-22 with the witness stands proved, hence T.I. Parade stands irrelevant. It is becoming clear that the witness knew all the three accused since previously.

(b-2) From para-17, 18 and 19, it stands proved that the witness is an eyewitness of the morning occurrence at Nurani.

(b-3) From the cross-examination, it stands proved that there was cross stone-pelting between Hindu and Muslim, but then this point has been discussed more than once and it does not create any valid defence as has been already discussed.

(b-4) From para-25, it stands proved that the witness has seen Bhavani in the morning occurrence.

(b-5) It is also becoming clear that the witness has seen A-22 and Guddu in the noon occurrence in the Muslim chawls where Muslims and their property were burnt, Muslims were killed.

From para-7 and others, it is getting clear that all three accused were seen with weapons at the respective places during different occurrence which fact has not at all been challenged during the cross.

(b-6) First two line of para-9 and last two line of para-11 and while reading the same with para-28 and para-31, it stands clearly established that the witness is not an eyewitness of the occurrence of the death of his elder brother Mohammad Aiyub Allabaksh Shaikh.

However, it is getting clearly established from the examination-in-chief that he has left his brother alive at his house in Jawan Nagar lane No.1 at about 3:00 p.m. while he left his house and that his brother had died after the mob of the miscreants unduly entered the Muslim chawls which the witness has seen, this connects the death of his brother with the noon occurrence, hence it stands proved that the death of Mohammad Allabaksh has caused in the noon occurrence which the witness has learnt from hearsay evidence and that the witness has no personal knowledge of the occurrence.

(c) FINDING OF PW-226 :

(c-1) The witness is an eyewitness of the morning occurrence where he has witnessed presence and participation with weapons that of accused Bhavani.

(c-2) The witness is an eyewitness of the noon occurrence at the Muslim chawls. The presence and the participation with weapon that of A-22 and Guddu stands proved in the noon occurrence at Muslim chawls.

(c-3) Through this witness, it stands proved that death of elder brother of the witness viz. Mohammad Aiyub Allabaksh Shaikh had caused in the noon occurrence at Muslim chawls wherein presence and participation of Guddu and A-22 proves beyond all reasonable doubt.

70. PW-228 :

(a) The gist of examination-in-chief of this witness is as

under.

The witness is Std. 3 pass, is resident of Naroda Patiya from his birth, the witness was aged about 14 years then, the witness was working, he is eyewitness of the morning occurrence including the attack on Nurani, this witness has seen a mob with weapons to have come in the open jeep which got down near the temple of Ambe Mata, near Patiya cross-roads, he also saw another mob which was ransacking, stone-pelting, throwing gas cylinders and attacking on Nurani.

This witness is also eyewitness of the noon incident at the Muslim chawls where he has seen Bhavani Singh misguiding Muslims on the name of the security and he has also seen mob with weapons near Tisra Kuva.

He has seen another mob in the evening between 6:30 to 7:00 p.m. at *khancha* / water tank where he was cordoned by the mob wherein A-18 was present with the sword and was showing newspaper of Godhra occurrence to the witness by saying that 'look here, what you have done at Godhra, you would also face the same fate'. After reciting Jay Siyaram, he has started cutting and killing Muslims. In this mob, the witness saw Guddu, Bhavani, A-22 and A-28 who also did the same, burning rags were being thrown from the terrace of the tank, children were burnt then alive, the witness was also injured there, he however, managed to escape from the site and hide himself behind the bushes situated between Gangotri and Gopinath. His family members were parted here, he saw his cousin Kausharbanu, Khalid Noor Mohammad Shaikh, who was pregnant, she was caught hold by four

persons and A-18 has slit her stomach, A-18 has taken out the fetus on tip of sword and has swirled and thrown it in the fire. Even Kausharbanu was thrown in the fire, he saw one unknown woman whose clothes were torn and the men of the mob were outraging her modesty by inserting iron pipe in her private part, he also saw Kudratbibi who was lying down in a burnt condition, a stone was thrown on Kudratbibi hence flesh came out her head (at para-53, the part of the statement before SIT tallies with this though it is not verbatim same but then it is natural, this shows the witness was an eyewitness of evening occurrence. If Exh.818, the PM note of the identified dead body of Kudratbibi is perused then injury No.2 at Col. No.17 tallies with the contention of the witness and that additionally it should also be noted that the said Kudratbibi died during her treatment on 5/3/02), she was completely burnt, the men of the mob were examining as to who was living by beating the persons lying there, he did pretended of having died at this time, Guddu has given him pipe blow on his head hence, he became unconscious while regaining consciousness, he rose up, through the road of S.T. Workshop wall, he came out on the way, saw many dead bodies on the way by walk went to the house of the employer, who took to L.G.Hospital, treated there, stayed there, bill of L.G. was paid by employer, went at the camp, met father of Kaushar Noor Mohammad who was my maternal uncle, who told me about death of my parents viz. Noorjahan Banu, Ismail Shaikh and sister Sufiyabanu, my maternal aunt, Jenabbibi and her six family members were also done to death at this place, in this evening occurrence, saw Bhavani, Guddu, A-18, A-22, A-28, the witness identified the three, damages caused to the house at Hussain Nagar.

(b) CROSS-EXAMINATION OF PW-228 :

(b-1) The witness admits to have got his share in the compensation, the elder brother received for death of his parent and sister, this shows that the parent and sister of this witness had died in the occurrence.

(b-2) The witness admits that his only statement was recorded at SIT, at the time of occurrence, he was only 14 years, on demand by the defence, he produces the school leaving certificate at Exh.1630 wherein his birth date is shown to be 11/09/1989, which has not been challenged, this shows the credibility of the witness on the count of his age.

(b-3) The witness admits that the death he refers of his parents, his sister, maternal aunt, Jenabbibi and six members of his family at the water tank has not been witnessed by him. Thus, the witness does not claim his personal knowledge about the death of the mentioned relatives, but then the witness has not been examined to prove their deaths, hence it is irrelevant.

(b-4) At para-32, the witness states that the time of the evening occurrence at water tank was about 06:30 or 7:00. However, it is true that the witness has stated before the SIT the time of the occurrence to be 07:00 or 07:30 p.m. which the witness explains to have given as estimated time.

In the opinion of this Court, what was the time of the occurrence has lost its significance for the reason that it is an admitted position that there was fire at the site and hence, availability of light is no issue, hence this part of the cross-

examination also, does not create any doubt against the version of the witness.

(b-5) Para-34 to 40, 57 and 59 are related to topography and in light of the testimony of this witness, topography and that too the way to go to the residence of employer is indeed not important when it is not related with any incriminating fact and that it is equally probable that a boy of the 14 to 15 years would be inclined to reach at the place which has been seen by him and to see the person with whom he is sure of safety.

In such circumstances, it is quite natural that the witness would not say the history to the doctor, he may not have receipt of L.G. since the payment was made by the employer, he would not have the injury certificate since he was not admitted in the hospital and that as is clear at para-44, he took treatment at the camp, hence the sum and substance of this part of the cross-examination shows that the witness was injured who took treatment at L.G.Hospital as an outdoor patient and then reached to Camp where he took indoor treatment. It is immaterial whether he stated before the SIT on the contents mentioned at para-21 about the fact as to how he reached to camp from the L.G.Hospital hence all these questions and their replies in the cross-examination, do not create any doubt against the version of the witness.

(b-6) The fact as mentioned at para-47 and 48 that father of Kaushar is alive at Karnataka and was informed by the witness about the occurrence of Kaushar does not create doubt as the father of the Kaushar has left for Karnataka and as this witness has himself stated in his testimony, the father of

Kaushar has remarried after the occurrence, hence it is probable he would not take the matter ahead. The possibility of the father of Kaushar to have settled at Karnataka is very much bright as it is undisputed fact and even suggested at para-49 by the defence that at Naroda Patiya, most of the Muslims are from Karnataka.

(b-7) At para-50 and 51, the witness clarifies that the dead body of Kaushar was not found, she was burnt there, she married with one Firoz Khwaja Moiyyuddin Shaikh (PW 225) who was residing at Masjid Chali. This seems to be an undisputed fact.

(b-8) The fact at para-61 and 64 about the counter stone-pelting by Muslims and the fact of police firing in the morning occurrence and the injuries to some Muslims are all admitted position and these aspects have been discussed again and again which do not create any doubt against the prosecution case.

(b-9) At para-66, the witness reveals very clearly that while everyone was running here and there, to save one's life and while he was in the hall shown by Bhavani, Kausharbanu and her mother (Jainambibi) were with him and at para-67, he clarifies that until Kausharbibi was in the hall, she has not sustained any injury. This shows that, till noon, nothing happened to Kausar.

(b-10) PW 228 seems to be very truthful witness, when he states that Kausharbanu and her maternal aunt viz. mother of Kausharbanu were with him at the hall, and that he has then

seen them at the *khancha*, the witness was only 14 years boy then and from the acceptable and dependable part of his deposition, no doubt is left out in the mind of the Court that the witness has seen an attack on Kausharbanu and that Kausharbanu was dragged by four persons (this fact is also stated by PW 147). No doubt is also left out on the fact that sword blow was given to Kausharbanu and then she was burnt at the site of *khancha* (this fact is also told by PW 142, 147, etc. 158 who, all have seen the occurrence).

(b-11) PW 228 at para-66 and 67 states to have seen Kaushar without any injury until she was in the hall with him and that she came inside the hall walking.

(b-12) The defence wanted to depend on the PW 225 who is husband of the said deceased, Kausharbanu. This is an illiterate witness who admittedly states that on the date of the occurrence, his wife Kaushar went for delivery to her-in-laws which at the house of Khalidbhai and Jainambibi, the witness after having seen the morning occurrence, went to take his wife at Hussain Nagar, at Hussain Nagar, he has seen the mob assembled which was beating and killing Muslims, the mobs were burning the houses and were giving slogans of 'Kill, Cut', the witness was afraid and went to *khada* of Jawan Nagar. At about 04:00 p.m. when he saw his wife and mother-in-law, the witness states that, 'my mother-in-law and wife were cordoned by the mob she was passing through 9th month of her pregnancy, the witness states that he saw somebody giving sword blow and then out of fear, he ran away, later at the camp, he learnt that his wife had died.'

(b-13) This Court has held that PW 225, the husband of Kausharbanu does not prove any attack to have been effected of the sword blow on Kausharbanu at Jawan Nagar Khada, hence the question does not arise that PW 225 in any way is falsifying other eyewitnesses when even PW 225 himself does not claim to be an eyewitness.

(b-14) This Court has found that PW 158 is very reliable witness, who is an eyewitness of the death of Kaushar at water tank and the fact that Kaushar was then burnt at *khancha* and that that fact is seen by many other witnesses including this witness, hence this Court is inclined to believe PW 158, PW 228 etc.

(b-15) The cross-examination done keeping in mind the testimony of PW 225 needs no discussion.

(b-16) The witness has stated that the *khancha* of water tank is having width of 20 to 25 feet whereas the length was 15 to 20 feet. In the *khancha*, there was overhead water tank and there was room below, on the wall of the *khancha*, there were glass pieces fixed on its top and the said was about 4 to 5 feet of height. The witness has admitted the suggestion that the wall of the *khancha* is between Gopinath Society and Gangotri Society viz. on one side of the wall, there is Gangotri Society and on another side of wall, there is way to go in the Gopinath Society, this aspect justifies the version of many witnesses who could successfully escape from the *khancha* occurrence by jumping the wall.

(b-17) At para-71, the witness is confronted on the *khancha*

wall and no part of the reply creates any reasonable doubt in the mind of the Court and that it is exactly this read with the examination-in-chief proves the death of Kausharbanu at the *khancha* wherein as stated by the witness at para-72, the witness has seen A-18 (at para-13, this witness has stated that A-18 has slit the stomach of Kausharbanu), he was at the site for more than two hours and for more than two hours, the *khancha* occurrence continued where numerous Muslims were done to death. The witness admits that he has not given any loud call to anyone as he was sure that there was none to help him and he also could not go to save his sister Kausharbanu as he was sure that he would have killed then. This confirms that the witness has seen the occurrence of homicidal death of Kausharbanu. The fairness of the witness can be noticed when he does not say anything about the death of mother of Kausharbanu though suggested, he fairly states that he has not seen the death of Jainbi, the mother of Kausharbanu, as he has not seen as to what has happened to her.

(b-18) No doubt is left out in the mind of the Court about A-18 to have slit stomach of Kausharbanu as was witnessed by the PW, but at the same time, the description seems exaggerated. While seeing the witness to have been given exaggerated version, it must be understood that after all, this is an observation of child of about 14 years old then and that his perception to such ghastly occurrence would be little different then the adult man with all understanding. The sum and substance is Kausharbanu was pregnant whose stomach was slit open, the other thing of swirling etc. even if is not believed then also the fact of homicidal death of Kausharbanu by slitting her stomach and burning her, obviously with the

fetus, stands proved. It is probable that a child of 14 years may understand piece of flesh as infant child also, but that is not important, the important aspect is, is it in any manner doubtful that Kausharbanu was not killed by slitting her stomach and then by burning her with the fetus in her body by A-18 and others in the mob or not.

In the opinion of this Court, in the facts and circumstances of the case, this sounds perfectly probable. The witness has also stated his mental state of that day at para-80 and at para-81, it is clear that he was child then. Para-82 confirms the presence of Guddu, A-18, A-28, A-22 at the site on the day. The combined reading of para-83 and 86 shows that the witness was knowing all these persons and that the witness is admittedly living in the area right from his birth where A-22, Guddu and A-28 are living and A-18 was a leading personality of Vishwa Hindu Parishad then.

(b-19) The cross-examination on SIT applications and the fact that the witness returned at his house at Naroda Patiya as is clear at para-93, shows his route in the area.

It is worthy to be noted that except a most immaterial sentence, that "many people could jump the wall near the water tank", no other omission or contradiction could be shown by the defence in the testimony of this witness who even had passed the test of probability. (Ref. para-685 of PW 327)

(c) OPINION :

(c-1) The witness is found truthful, keeping in mind his age of only 14 years when he has witnessed entire terrific and horrifying occurrence of *khancha* where several persons were burnt alive, no reasonable doubt is created against his version.

(c-2) The fact of outraging the modesty of woman has also been referred by the witness which though not against any of the accused, it speaks a lot about the atmosphere at *khancha* at that time.

(c-3) Even after extensive and very lengthy cross-exam. the witness has withstand, no reasonable doubt is created in the mind of the Court to disbelieve the witness.

(c-4) As has been discussed under the head of incident of Kausarbanu, the murder of Kausarbanu is held to have been committed by A-18, at the evening occurrence on the day and that this PW is held to be truthful.

(d) FINDING OF PW-228 :

(d-1) The presence and participation of Bhavani, Guddu, A-18, A-22 and A-28 stands proved at the *khancha* in the evening occurrence beyond any doubt. The witness proves the homicidal death of Kausharbanu by A-18 at this *khancha* occurrence and burning her by all of the accused.

(d-2) The presence and participation of Bhavani even stands proved in the noon occurrence beyond any doubt.

(d-3) The PW suffered damages at his house.

(d-4) The witness proves that he was injured by pipe blow given by Guddu and burns injuries to have been sustained by him in the evening occurrence at *khancha* and that he was given treatment at camp.

71. PW-229 :

(a) The gist of examination-in-chief of the witness is as under.

(a-1) The witness is a Muslim widow labourer woman. She has studied in Urdu Medium upto 7th standard.

(a-2) This witness has proved to be an eyewitness for the morning occurrence, including attack on Nurani.

(a-3) In the occurrence of the morning, the eldest son Saiffudin and the youngest son Harun of the PW, have had sustained injuries in the stone-pelting who both were treated at camp.

(a-4) The witness has acquired hearsay knowledge on the *khancha* occurrence and about numerous Muslims to have sustained burnt injuries in that and death of numerous Muslims to have caused in that occurrence.

(a-5) The witness proves damages of her house in the occurrence.

(a-6) The witness correctly identified A-22 and A-26 in the

occurrence.

(a-7) Para-10 read with para-12 shows that the witness proves presence and participation of A-22 and A-26 in the noon incident wherein the mob entered in the Muslim chawls and did different offences where A-22 and A-26 have tempted the witness to come out by saying that they would put her to safe place and then after the witness was told to go away at Hyderabad.

(a-8) The witness has seen the vehicle of crippled Maiyuddin near Hussain Nagar Gali No.1.

(b) CROSS-EXAMINATION OF PW-229 :

(b-1) There is no substantial challenge to the version stated by the witness in examination-in-chief except the omission and contradiction to have been attempted to be shown from the statement of 2002.

(b-2) There is hearsay evidence of the injuries which were sustained by Mehboob, Shabnam and Shafi wherein the witness has only seen these three burnt relatives to whom she has taken to V.S.Hospital and from those burnt relatives, the witness has heard death of numerous other relatives since all these evidence is basically hearsay evidence but, it is supporting to the evidence given by PW 72, it would be proper to hold the death of two of the three to have occurred in the *khancha* incident viz. death of Mehboob and Shabnam as proved by PW 72.

(c) FINDING OF PW-229 :

(c-1) The eldest son, Saiffudin and the youngest son Harun were injured in the stone-pelting in the morning occurrence who were treated at camp.

(c-2) The witness is an eyewitness of morning occurrence including attack on Nurani Masjid.

(c-3) The presence and participation of A-22 and A-26 stands proved beyond all reasonable doubt of the noon occurrence for which the witness is an eyewitness.

(c-4) The witness has seen the vehicle of crippled person used by deceased, Maiyuddin near Hussain Nagar lane No.1.The witness has acquired hearsay knowledge on the *khancha* incident and about numerous Muslims to have sustained burnt injuries as they were burnt by the miscreants there and about death of numerous Muslims to have been sustained in this *khancha* incident.

(c-5) The witness proves damages to her own house in the occurrence.

72. PW-230 :

(a) The gist of the examination-in-chief of the witness is as under.

The witness is 7th Standard pass, residing at Naroda Patiya right from birth, is eyewitness of morning incident at

Nurani where he saw A-41 with revolver and doing firing from the same. The witness has then also witnessed police firing and bursting tear gas.

The witness has then seen noon incident at the Muslim chawl upto 4 to 5 p.m.

The witness has then seen the evening occurrence where he has seen Guddu and A-22 to have pushing the people throwing them in a corner. At this place, from the water tank and from the terrace etc. nearby, inflammable substances were being thrown on 27 to 28 Muslim women, male and children who were then burnt, they were screaming to save them.

At night, the witness was taken down from the terrace, took to Naroda Police Station alongwith family from where he and family were taken to camp.

The damages in the house of the victim was sustained on the date of the occurrence.

The witness has identified A-41 and A-22, Guddu had died.

(b) CROSS-EXAMINATION OF PW-230 :

(b-1) The witness has been confronted on topography. On the base of topography, nothing has been revealed because of which the witness cannot be believed.

(b-2) The witness was suggested and has admitted that

the mobs of Hindus were damaging Nurani Masjid in front of Muslims and that the youngsters of the Muslims have attempted to save the Nurani, the witness is unable to give name of any such Muslims. Merely this fact cannot mean that the witness was not present at the site, his observation for the acts of miscreants and his observation of the Muslims who were protecting Masjid cannot be equated with each other.

(b-3) It is true that the witness admits that though there was mob of thousand of the Muslims, they have not injured the witness. Even this reply, cannot challenge the credibility of the witness rather what reveals from the cross, is that the witness has seen the entire occurrence of morning for about two hours, which adds to the credibility of the witness.

(b-4) At para-25, it stands revealed that upto the two hours, we stay upto 11:30 a.m. or so, the mob did not come to the Muslim chawls, but then that is not a prosecution case, hence this cross does not prove anything.

In this para, it also stands proved that upto 5:00 p.m. or 6:00 p.m., the witness and others were trying hard to save themselves and he volunteers that had he been caught by the mob, he would have been killed. This part of the cross, shows the seriousness of the noon occurrence and that the noon occurrence went on upto 5:00 to 6:00 p.m. in the Muslim chawls which is proving the prosecution case.

(b-5) At para-27, the part of the statement of the year 2002 has been admitted which in fact proves the prosecution case, the other paragraphs are related to the damages at the

house of the victim and the part of the statement of the year 2002 which is not admitted by the witness.

(b-6) At para-34, the damages to have been caused to the cart of pan of the witness in the occurrence, stands proved.

(b-7) Through para-37, it stands proved that the witness was near the S.T. Workshop and he has seen A-41 at the visible distance in the morning whereas A-22 and Guddu were seen in the noon occurrence inside Muslim chawls.

At para-38, the witness has stated that he has seen A-41 demanding revolver from police and the police has given him revolver.

At para-39, what has been asked in the cross-examination is again confronted by putting up the defence case that it was not so stated before police, but such kind of questions can only be asked for the facts which has been stated by the witness in the examination-in-chief as his case. The defence that in the earlier statement, the witness has not stated any details is not available when the witness is replying something with reference to the cross-examination. It is well known position of law that the omission in the earlier statement goes with what is stated in the examination-in-chief before the Court and what is stated before the IO. If the defence itself is taking some more details, in the cross-examination then the defence owns the same and it cannot be used to decide credibility of the PW as attempted. As it may be, but the fact remains that this cannot be said to be omission of the witness.

It is however, notable that in SIT, the witness has stated about the riffle to have been taken or snatched by the accused from the police whereas in the examination-in-chief, he states about revolver. In the opinion of this Court, expertise on the kind of fire-arm is not a subject matter of the witness, hence whatever the witness is stating if is understood from the lenses of laymen, the witness talks of the possession and use of fire-arm by A-41 on that morning and no doubt is created in the cross-examination on this aspect.

(b-8) At para-41, it is indeed doubtful whether Abid was hurt in the private firing or not. Since the witness is not expert to say who is injured in which firing, the version of the witness that which victim was injured in whose firing cannot be believed.

The first I.O. ought to have obtained the remains of the bullet from the injured who were injured in the firing, but the IO has not done that. For the said lacuna of I.O., the accused cannot get benefit when the prosecution has proved the case of private firing by the eyewitness himself which fact does not seems to be doubtful.

(b-9) At para-45, the witness admits that he has not stated that he has seen the incident from Dilip-Ni-Chali at his pan-galla, but it is nowhere doubted that the witness went outside in the morning and stood near S.T.Workshop. Speaking from the view point of the site the S.T.Workshop and Pan-Galla at Dilip-Ni-Chawl is almost one in the same and is only question of few steps here or there. In light of the fact that the witness is

a rustic witness, the appreciation of the evidence cannot be inch wise, it has to be in a broader spirit.

(b-10) The uniform mechanical sentence in the statement of the SIT has been attempted to be highlighted which is insignificant as has already been discussed.

(b-11) At para-9 and 10, the witness has stated about act and omission of Guddu and A-22 of pushing about 27 to 28 Muslims near the Water Tank and then burning them alive etc. in the evening occurrence. At para-45, this fact has been confronted wherein the witness has admitted that he has not stated before the SIT that he has seen this act and omission from the parafeet of the terrace.

If the testimony of PW 327, the I.O. of the SIT is perused, it is nowhere been challenged that the witness has not reported to the SIT about his knowledge to have seen the act and omission of A-22 and Guddu which would only mean that the witness has not stated from which place he has seen the incident, but at the same time, it is also not fact that the witness has not at all stated before the SIT, this if seen collectively would mean that the witness did see the occurrence as mentioned of act and omission of Guddu and A-22 which is also alleged by many many other witnesses and that the witness being rustic, he may not be perfect in giving minute details but then the Court has to see as to whether the fact has been stated by the witness or not and that with those lenses when is seen, it seems that the witness did state about the act and omission of A-22 and Guddu in the evening occurrence which is in fact stated by many many prosecution

witnesses and this helps the prosecution case to establish the presence and participation of A-22 and Guddu in the evening occurrence as neither presence nor participation is disputed as far as evening occurrence is concerned.

(b-12) It is worthy to be noted that at para-687 and 688 of the testimony of PW 327, the presence and participation of A-41 in the morning occurrence stands proved beyond reasonable doubt. As discussed, the witness is a rustic witness hence there may not inch-to-inch similarity in the statement before the I.O. and in the version before the Court. The general tenor of both is to be seen by the Court as the Court must be clear as to how the rustic witnesses are used to describe the incident seen by him and what are their limitations of communication, expression, description and reproduction of the details about the occurrence.

(b-13) Considering the over all facts and circumstances of the case when the facts stated by the PW that he resides at Naroda Patiya for about last 50 years (Para-2 read with age 53) and when A-41 has his total roots in Naroda Patiya area specially as far as his business is concerned and the fact that Guddu was and A-22 is inhabitant of Naroda Patiya area, this Court can safely infer prior acquaintance amongst the three accused and the witness and there does not appear any possibility of mistaken identity of the accused, following finding can be given qua this witness.

(c) FINDING OF PW-230 :

(c-1) The presence and participation of possessing and

using fire-arm by A-41 in the morning occurrence, stands proved beyond all reasonable doubt.

(c-2) Presence and participation of Guddu and A-22, stands proved beyond all reasonable doubt in the evening occurrence of *khancha*.

(c-3) The witness is an eyewitness of morning (Nurani Masjid), noon (in Muslim Chawls) and evening occurrence (*khancha*).

(c-4) He has suffered damages at his house and cart.

73. PW-231 :

(a) The gist of the examination-in-chief of the witness is as under :

This witness is a housewife, who has seen the noon occurrence, she states that her husband was dragged upto last lane of Jawan nagar by Guddu and then in the rickshaw lying there, her husband was cut and burnt by pouring inflammable substance on him by Guddu, Bhavani and A-22. Her mother-in-law and brother-in-law were injured in the occurrence who were treated at camp, the dead body of the husband was buried at Shahibaug graveyard, the witness was also beaten in the occurrence, she has suffered a lot physically, mentally and socially, she is tremendously upset and afraid even on the date, entire house was damaged, the witness is totally illiterate, she could identify A-22, Bhavani and Guddu had died.

(b) CROSS-EXAMINATION OF PW-231 :

(b-1) Through this witness it has come on the record that Maroof, Meblahussain residing at Jawan Nagar and Nazir master residing in the chawl of the witness are all the three persons who have written applications and complaints for many victims and that they were helping Muslims at camp in writing the applications and complaints.

In the opinion of this Court there is nothing to be surprised about and there is noting to be prejudiced about as the victim and witnesses are from very poor strata of the society, most of them are illiterate and in any case except one or two victims, none was educated beyond matriculation. Barring one or two every Muslim victim belongs to Karnataka and very few of them belong to Rajasthan, Madhya Pradesh and Maharashtra, but except one or two families, no family is found to have been hailing from Gujarat. When the applications given to all the authorities are in Gujarati language the victims would be in search for writers for them and if the educated community member is rendering his services to the fellow community person there is nothing wrong about it. Rather that is appreciable services. It is different that sometimes out of enthusiasm or sometimes because of inability of the signatory to give proper clothing of language to their expression such writer do use their own language which might not be the language of the signatory, but the spirit of the expression is always from the signatory, unless proved otherwise. This inability of illiterate rustic witnesses can never be a ground to discard their version or to doubt bona fides of the their helpers.

(b-2) The witness is confronted on two of her SIT applications, 2002 statement etc. These points have been discussed at Part-2 of the judgment.

(b-3) A very important aspect is noticed in the cross examination of the witness wherein the witness at para 33, 34 and at para 35 the witness has admitted in specific that she does not know who has killed her husband and she in unable to identify the said person even if the same is shown to her.

Considering this conscious admission it is clear that the witness in fact does not know the accused who has killed her husband. Now, therefore, the homicidal death of the husband stand proved, but it does not stand proved that by which accused he was killed, hence as far as allegation of cutting and burning the husband of the witness is concerned Bhavani, Guddu and A-22 deserves benefit of doubt.

(b-4) At para-43, the witness has admitted that 'it is true that on say of my community people, I came here to depose.'

This admission should not be taken in an adverse spirit as the Court must understand that she is an illiterate Muslim woman, is a victim who was seriously injured mentally in the entire occurrence which the Court could notice during her testimony and that she is a witness who has changed her house in altogether a different direction due to the occurrence, hence her reservation to come and depose is her natural reaction. In these circumstances, if some of the awaken community persons persuades her, there is nothing wrong. She might be refusing even to come and speak on the occurrence

but then there is nothing wrong if, she is encouraged to step into witness box, the purpose of which is to assist the Court in administration of justice. Every educated and awaken person has duty to his fellow country man, to his fellow community man when such person is in difficulty.

(b-5) From the entire testimony, the damages to the house of the victim, the noon occurrence, the homicidal death of husband of the witness, the injuries to mother-in-law and brother-in-law stand proved in the occurrence. Involvement of Bhavani, Guddu and Suresh, is doubtful as whether all three were involved in cutting and burning the husband of the witness or not for which benefit is granted to all three only on the aspect of cutting and burning the husband of the witness. Their involvement in the entire occurrence is not doubted by the Court, as is clear on record.

Since the witness was resident of Patiya for last 15 years of the occurrence and when the three named accused belonged to the same area, the prior acquaintance of the witness with three accused can safely be inferred by the Court which in fact has not been challenged.

(c) FINDING OF PW-231 :

(c-1) The house of the witness has been damaged in the occurrence.

(c-2) The homicidal death of Mohammad Aiyub Shaikh, the husband of the witness, stands proved beyond all reasonable doubt in the noon occurrence, but who killed him

viz. who cut him and who burnt him is not getting proved.

(c-3) The witness is an eyewitness of the noon occurrence. The presence and participation of Guddu, Bhavani and A-22 in the noon occurrence stands proved.

(c-4) The mother-in-law and brother-in-law of the witness were injured in the occurrence and were treated at camp.

74. PW-232 :

(a) This witness is an eyewitness of the morning occurrence where according to him he has seen A-33, but since A-33 has not been identified in the Court and the over all impression this Court had in the mind about the witness, A-33 deserves benefit of doubt to have been involved as a member of the mob coming from Krishna Nagar and Natraj. The witness does establish that he was eyewitness of the morning occurrence and his house etc. was damaged too much, but nothing beyond that stands proved.

(b) FINDING OF PW-232 :

(b-1) The witness is an eyewitness of the morning occurrence.

(b-2) Benefit of doubt is granted to A-33 qua this witness.

75. PW-233 :

(a) The gist of examination-in-chief of the witness is as under.

The witness is an illiterate person, residing at Pandit-Ni-Chawl behind Nurani for last 20 years, was selling kerosene in cart which was rationing kerosene, the cart was being parked opposite Nurani Masjid, on the previous night of the occurrence also, he did the same, this witness has seen the morning occurrence who has seen people unduly entering in Nurani and using kerosene to burn Nurani from the carts of him as well as of PW 258, Mohammad Usman Mehmoodbhai Shaikh who was also keeping his cart with kerosene near Nurani. The witness has kept 50 liter of kerosene in his cart which according to him was used to burnt Nurani as the entire cart was thrown inside Nurani.

In this occurrence, the witness has seen A-41 and A-44, his house was also tremendously damaged and robed and his cart was burnt. He identifies A-41, but does not identify A-44.

(b) CROSS-EXAMINATION OF PW-233 :

(b-1) At para-13, an attempt to show contradiction is made, but in the opinion of this Court, it is no contradiction when the witness has not stated before SIT that the mob came from Krishna Nagar and Kuber Nagar, but has stated that the mobs of Hindus were assembled near Nurani. It is indeed not important wherefrom the mobs came, but it is important what act and omission the mob did and as a result which place was damaged, hence no omission or contradiction is found notable.

(b-2) At para-16, the part of SIT statement is brought on record, but then it tallies with the examination-in-chief of the witness.

(b-3) Para-18 clarifies how close Nurani was from the residence of the witness.

(b-4) The admission at para-21 has no relation with the case being put up by the witness, hence is not found of any importance.

(b-5) Para-26 shows prior acquaintance of the witness with A-41.

(b-6) Para-28 does exhibit that there was arrangement to take down the complaint, but the fact remains that like this witness, many victims can never be in the mental framework to give any complaint when they have to bother for the lives of themselves and of their family and moreover, as is volunteered by the witness at para-29, such witness would always be under tremendous grip of fear.

No other points have been highlighted in the cross-examination, however, A-44 needs to be granted benefit of doubt as looking to the over all facts and circumstances and the testimony, there is nothing to believe that the witness has any prior acquaintance with A-44 who is not identified and no other TIP was held. This witness tallies with PW 258 who is also a kerosene seller.

(c) FINDING OF PW-233 :

(c-1) This witness is an eyewitness of morning occurrence who proves presence and participation of A-41 as a member of mob which has thrown his 50 liters' of kerosene cart in the Nurani Masjid in morning occurrence beyond reasonable doubt.

(c-2) The house of the witness was damaged and his kerosene cart with 50 liters' of kerosene was burnt.

(c-3) Benefit of doubt is granted to A-44 qua this witness.

76. PW-234 :

(a) The gist of the examination-in-chief of the witness is as under :

The witness is a resident of Kumbaji Chawl for last 15 years, studied upto Std. 5th only, has witnessed the morning occurrence, Muslim women went to request police when police has beaten the women, police firing was there, the garage of brother of the witness Mubarakahmed was burnt at Krishna Nagar, A-44 was seen near his garage, he was provoking people to unduly enter from the way of Uday Gas Agency and to start killing and cutting, he has specifically told that Muslims do not have any weapons and none of the persons should remain alive, he has also witnessed noon incident wherein mob with weapon entered in the chawls which is all after 11.30 a.m., Nurani was burnt, the men of the mob were torching with the gas cylinder, the mob has taken 8 to 10

drums of kerosene from the Rationing Shop by breaking the shop and the said kerosene was used in torching the area of the witness, from Hussain Nagar one crippled boy Moin was taken out, rags were fitted into his mouth, his hands and legs were tied and by pouring kerosene on him he was burnt alive, the terrace of the house on which the witness was, was also burnt by using gas cylinder of the surrounding houses, at about 6.30 or 6.35 p.m. the witness had been towards Gangotri Society, while returning he has seen Bhavani with sword, Bhavani was screaming that 'not a single Bandiya (Muslim) should be saved, kill them all' they then went to one three storeyed building for refuge where 400 to 500 Muslims were hidden, at this place he has seen Khalid with lot of physical ailment who was a victim of firing in the morning he was craving for water, other people were also crying and seeking water since they have also sustained burns injury etc.

Ultimately at late night while going to the camp the witness has seen the burning houses in the Muslim chawls which was also creating light in which they were coming. Here the witness has seen that the dead body of Moin was lying on the way.

The father, brothers, wife and the victim were all injured who all took treatment at camp, the witness has suffered damages at his house.

He knew Bhavani and Bipin Panchal, Bhavani is dead, Bipin Panchal is identified as of Bipin Auto Centre.

(b) CROSS-EXAMINATION OF PW-234 :

(b-1) Paras 35, 38, part of 51, part of 53 etc. of the cross examination are based on topography, not knowing every person of the Kumbaji Chawl, the fact that many of the neighbours came out to see the occurrence, the shop owners, cart owners etc. were also standing worrying for their property (which is natural), the fact that the first stone pelting was on Nurani and on start of the stone pelting he went inside the Chawl,

(b-2) The witness admits that he saw the mob of about 100 to 150 persons when he saw the garage of his brother was burning, at this time, Bipin Auto Centre was open and the mob was also standing near it, the mobs near Bipin Auto Centre and the mobs near the garage of his brother were screaming very loudly, upon asking, the witness states about the location of Bipin Auto at para 57 which makes it clear that there was no chance of mistaken identity of A-44 and there was prior acquaintance.

(b-3) The witness admits that he has seen A-44 only once in the morning at Bipin Auto Centre and thenafter he has not seen him. It needs a note that this witness involves A-44 only in the morning occurrence.

(b-4) At para 59 the suggestion is denied by the witness that he was in employment of Bipin Auto Centre and he has relation with Bipinbhai. If the fact is seen that the brother of the witness was also running a garage of four wheeler as is clear on record normally the probability of the witness to be in employment of A-44 seems to be very fade. It is also not

proved.

(b-5) The probability of the occurrence mentioned at para 64 to 67 read with para 11 of having sent burning tanker etc. does not appeal reason, hence the said part of the deposition has been kept out of consideration.

(b-6) Para 22 when read with para 70, and then read with para 692 of PW 327, it seems that the presence and participation of Bhavani in the evening occurrence stands proved and that there is no contradiction or any kind of omission between SIT and the Court version when it makes no difference whether from the backside of the society or while returning from the society Bhavani was seen. What is important is whether Bhavani was present and was participating or not.

(b-7) The fact of gas cylinders to have been brought in ambulance from para 14, 71 to 74 read with para 692 of PW 327 it seems that there is material omission at SIT as to at one place the witness states about gas cylinder and at another place he states about kerosene, gas etc and that considering it to be material omission it is not safe to act upon either version of the witness.

(b-8) Para 75 to 77 does not create any doubt about the large iron tins of kerosenes to have been used from the Rationing shops. It is obvious that witness would not be able to reply as to how much kerosene was there in those tins, but even through other witnesses it has come on the record that there was Rationing shops also selling kerosene situated at

Muslim chawls, this supports the prosecution case.

(b-9) Except a few part of the testimony of the witness where there is material omission and where the principle of probability is not attracted that of burning tanker to have been sent by putting brick on the accelerator, the witness is found truthful and credible one. At times one may tend to give exaggerated version but merely that is not sufficient to hold that the witness is not credible when it is clearly separable from the remaining deposition.

(c) FINDING OF PW-234 :

(c-1) Presence and participation of A-44 stands proved in the morning occurrence.

(c-2) Presence and participation of Bhavani in the evening occurrence stands proved.

(c-3) The occurrence of burning crippled Moiuddin gets support.

(c-4) Large iron tins filled with kerosene have been used from the rationing shops for the occurrences.

(c-5) Police firing did take place.

(c-6) The witness is an eyewitness of the noon occurrence, morning and evening occurrences.

(c-7) The witness himself, his father Basirahmed, his

brothers Mubarak and Mohammedali, his wife Samsadbanu were all the five who were injured in the occurrence and who all have taken treatment at the camp.

77. PW-235 :

PW 147 is wife of this witness, whose version satisfactorily tallies with the version of the witness. In fact according to this witness, he has put his wife and his four children at SRP Quarters in the morning, thenafter, they have met after several days.

PW 147 has deposed that she has proposed to all to leave the chawl and go towards Jawan Nagar and then, she along with her children and others have started going to Jawan Nagar. From Jawan Nagar she has ultimately gone to SRP Quarters from where she frequently came out as her husband was not with her. This witness is also saying the same thing that they were parted right in the morning.

(a) The gist of the examination in chief of the PW is as under :

The witness resides at Imambibi ni chawl for last 20 years, studied upto 8th Std., witness of the morning occurrence, in the morning occurrence he saw A-44, A-47, Guddu and deceased Laliya Chhara (deceased Accused No.6) to have been stone pelting and robbing, the house of the witness was damaged, he took his wife and children to put them at SRP Quarters, he could met thenafter his wife and four children after 15 days from the date of the occurrence, the witness

know all the four he has identified A-47 and had stated that Guddu and Laliya had died, this PW has identified A-17 instead of A-44. (the Court has noted that there is too much resemblance in the outer appearance of A-17 and A-44 and they look alike).

(b) CROSS-EXAMINATION OF PW-235 :

(b-1) The witness admits that the name of his wife is Reshma (PW 147), he resides separate from his parents in the same chawl. This material does not create any doubt on the prosecution version.

(b-2) The witness admits that his wife waked him up and he along with his wife went outside in the morning, the witness went to drop his family upto the wall of SRP Quarters, to enter inside SRP there is a small broken wall from where to and fro is possible, this is all tallying with the version of wife of the witness.

(b-3) The witness has seen his own house burning, this supports the prosecution case.

The witness admits that he has not given any complaint, but he explains that for initial days the complaints were not being recorded.

(b-4) The witness has fairly admitted that after once he has dropped his wife at SRP wall he does not know anything as to what has thenafter happened. He has not asked the same to his wife, the witness admits that the incident of Kausherbanu

(which has been deposed by PW 147 naming Guddu, Bhavani and A-22 and his friends to have dragged Kausherbanu at the evening occurrence of water tank) has not told to the witness by his wife.

It needs a note that the husband and wife met after 15 days, they must be extremely frightened and all the while bothering for their own survival and it cannot be expected that whatever was seen by PW 147 would be certainly told to her husband. Moreover para 29 of the testimony shows that the witness was going on his job while he was at camp.

(b-5) The witness does not know the office bearers of NGO or the fact that his wife has prepared any notarised document etc. In the opinion of this court all such things can certainly happen in day to day life. There is nothing to doubt.

(b-6) At para 33 the presence and participation of A-47, A-44, Guddu and Laliya clearly stand proved for which the witness is not required to know size and appearances of the persons in the mob as has been elicited at para 33.

(b-7) As seems at para 36 and 37 the witness was informed by his wife on the date of the occurrence itself that Maruti Car was burnt and that the witness has referred it in his statement of the year 2002 basing on this hearsay evidence. This truthfulness and fairness of the witness in fact shows that witness is dependable.

(b-8) The uniform mechanical sentence of the SIT is para 40 which as discussed at Part-2, in no way, damages the

prosecution case.

(b-9) The suggestion that the witness has involved the name of accused on account of enmity he has for the accused does not stand for a second when at para 52 the witness has admired A-47 in making the due payments of the labourers. There cannot be enmity with such person and that no reason of enmity is either proposed or carved out hence it cannot be believed.

(b-10) The witness seems to have referred A-44 as Bipin Gujarati. Since the PW has not identified A-44 and no TIP was held A-44 is granted benefit.

(b-11) At para 48, 51 and 52 the witness very clearly carved out the case of prior acquaintance with A-47. Hence the question of false involvement is out of question.

At para 47, A-17 has been referred to whom the witness is admittedly not knowing. The witness has identified A-17 instead of A-44. When he does not know A-17 by name it is becoming clear that he has identified A-17 instead of A-44. The court cannot forget the practical aspect that the witness is making an attempt to identify after 8 years and in between the witness is not residing in this Patia locality. The similarity between A-17 and A-44 speaks for itself and it is becoming clear that the witness is knowing A-44 and in the court out of tension or consciousness or even fear he has identified A-17 who as has been noted by the court is resembling with A-44. As it may be, but then A-44 deserves benefit of doubt. The fact as elicited at para 43 that the surname of Bipinbhai was not told

as Panchal and the witness was knowing Bipin only as Bipin and surname was not known to him are all the contents which sounds very very natural which all leans more to benefit to A-44.

In this case there is absolutely no false involvement at all.

(b-12) At para 49 the attempt is to falsify PW 213 Habibkhan, but it needs a note that what Habibkhan has done is not known to this witness merely that does not mean that the witness is speaking falsehood.

(b-13) At para 53 the suggestion has been put up by the defence that since PW 213 and A-47 had some dispute at which point of time the witness was with them and the witness and PW 213 threatened him to falsely involve him in the crime and therefore he is falsely involved.

(b-14) It needs note that even PW 213 has been examined as witness, he has not stated anything about A-47 and he has not involved him in the crime. If the suggestion at para 53 in the testimony of this witness was true then in that case PW 213 himself would involve A-47, but he has not so done, hence the attempt to create doubt on the grounds mentioned at para 53 fails and the said does not sound to be probable one.

(b-15) No substance is found from Exh.2385, the summons of A-47 by the SIT. At para 760 onwards of the deposition of PW 327, documents Exh.2385 to 2388 have been brought on record by defence which in light of production of Exh.2389 by the SIT

does not prove any defence.

(b-16) The submission emphasizing upon para 52 has not found favour with this court. It is true that at para 52, the witness while denying false involvement of A-47 has appreciated that A-47 is a good man and was giving more money than the due. But this sentence of PW cannot save A-47 from involvement of the accused in the crime. When a person becomes member of the mob his personality changes and that one who may be good man otherwise, when share the common objects and intention of the mob, he would act in the manner and mode commended or designed by the mob. In the humble opinion of this court this sentence at para 52 therefore is not providing any help to the accused, rather his involvement seems to be quite genuine on account of the reaction of the PW. Had the PW any grudge against A-47, he would even falsely involve him but, here the PW has regard for A-47 as a person. The participation of A-47 in the unlawful assembly and role as conspirator is the crux. The PW is natural and reliable, his version inspires the confident of the Court who proves the overt act of the named accused.

(b-17) While seeing the testimony of PW 327 more particularly at para 694 with reference to para 5 & 6 of the testimony of this witness it is extremely clear that there are two omissions made by the witness while before the SIT but this court is of the opinion that both are not material omission as at para 5 the witness states that where the youngest son of the witness was and where the house of his mother was. At para 6 the witness has stated that he saw the mob ransacking and looting his house. In the opinion of this Court the contents

are neither incriminating nor contradictory nor can be termed to be material omission. Hence there is no material to doubt the version of this witness.

(b-18) The witness is found to be truthful and there is nothing to doubt what the witness has stated before the Court.

(c) FINDING OF PW-235 :

(c-1) The presence and participation of A-47, Guddu and deceased accused Laliyo stand proved in the morning occurrence beyond all reasonable doubt.

(c-2) A-44 is granted benefit of doubt qua this PW.

78. PW-237 & PW-245 :

Both these witnesses are connected witnesses with PW 135 whose testimonies have been appreciated at an appropriate place in this Judgement, hence the repetition is avoided.

It is firmly opined that, they have supported the prosecution case in the best possible manner.

79. PW-238 :

(a) This witness is resident of Hussain Nagar, who was residing with her married sister and her husband and who was very less literate, the witness is an eye-witness of the morning

occurrence (firstly, about 9.30 to 10.00 a.m.), where she saw A-35, A-26 and A-22 in the mob, there was also police firing.

After 12:00 in the noon, she has also witnessed the noon occurrences at the Muslim chawls from the terrace she was, in this mob she has seen A-35 & A-26, at this time she saw A-22 with sword and A-4, to have been doing gestures by hands, brother-in-law Parvez was injured in the occurrence, her dowry articles were looted from the house and damages caused to her house, the witness has identified A-4, A-22 and A-26 whereas A-35 had passed away hence the trial against him has been abetted.

(b) CROSS-EXAMINATION OF PW-238 :

(b-1) The witness has been confronted to prove that she was not present at the site and she was not residing at all with her sister as deposed. But upon noting the fact that she is able to give names of the women of her chawl, she is able to give details about the topography, she is able to satisfactory answer as to the location where she was etc. no doubt is created against the credibility of the witness.

Her satisfactory knowledge about the surrounding comes in the way in challenging her veracity.

It needs a note that the fact that though others were injured or attacked the mob did not attack her or injured her is not sufficient to doubt her version as it can happen when the offences were committed on such a large scale and when the grievances is of commission of mass crime.

(b-2) The fact that the witness has taken refuge at the house of Pinjara which was very close by and when she is able to give the names of the person who were accompanying her at terrace, no doubt remains in the mind about the genuinity of the said part of the deposition.

(b-3) It is true that the witness does not know anything about VHP and Bajrang Dal, but that does not mean that she cannot be believed when the trial in not against the organisation it is against the individuals and the reference of the organisation can be based on hearsay, but since it is not a vital allegation, the credibility of the witness is not attacked.

(b-4) What has been stated at para 36 is quite dependable as even other PWs have also described the cement net to have been there on the wall of the terraces. It is natural for any person to have curiosity to see the occurrence having reached at reasonably safe place and therefore this seems to be the natural conduct from where the witness was also able to notice the accused as is clear at para 37.

(b-5) If para 44 & 46 are read then it is clear that the witness has also stated before the SIT about the details of the occurrence and about the involvement of the named accused.

(c) OPINION :

(c-1) The witness seems to be the eyewitness of the morning as well as noon occurrence. The witness has proved presence and participation of all the accused as member of the

mob who were burning and robbing Muslim houses in the noon occurrence. A-4 was present in the noon occurrence and was doing gestures by hand. It is clear as to A-4 was doing gesture being member of the mob of miscreants. The A-4 was conveying by his gesture to the other members of the mob. The PW seems to be truthful. Her testimony shows that the four accused were present at the site with incriminating participation. At para-10, A-4 is shown to be member of mob, hence the role is in fact ascribed to A-4 and other accused. As deposed at para-6, A-35, A-26 were doing stone-pelting and A-22 has sword in the morning occurrence. Thus, over all active participation of all the four is on record.

(c-2) At para 10, A-35 and A-26 were member of the mob which was doing all the offences at the Muslim chawls in the noon occurrence and A-22 had sword. Thus, the accused are not entitled to any benefit of doubt qua their presence and participation. A-35, A-26 and A-22 were present and participating in the morning occurrence.

(d) FINDING OF PW-238 :

(d-1) This witness is an eye-witness of morning occurrence and noon occurrence.

(d-2) She proves presence and participation of A-35 (abated), A-26 and A-22 in the morning occurrence beyond all reasonable doubts.

(d-3) PW proves the presence and participation of A-26, A-22, A-35 (abated) and A-4 beyond all reasonable doubt in noon

occurrence.

(d-4) She has suffered damages.

80. PW-239 :

(a) This witness has brought on record the fact that at Anjuman Grahak Shakari Bhandar wherein the witness was a partner, had stock of 1000 litres of kerosene on the previous night of the date of the occurrence.

The witness has seen the morning occurrence, who speaks of police firing and after seeing the morning occurrence while the witness was returning home he saw that a mob wherein A-22 was there was stealing his 45 goats from the open land opposite his shop named 'Ajmeri Mutton Centre' at Pandit ni chali.

The witness identifies A-22 as a person who has stolen his goats.

(b) CROSS-EXAMINATION OF PW-239 AND OPINION OF THE COURT :

(b-1) No doubt is created about the fact that the witness was a parter in Anjuman Grahak Sahakari Bhandar situated at Hussain Nagar, the witness is an eye-witness of the morning occurrence, had sent the police firing and the fact that there was a notable amount of kerosene in the stock at the shop run by the partnership in the name and style of Anjuman Grahak Shakari Bhandar.

(b-2) The fact of the stock of kerosene need not be doubted as it was a rationing shop where even kerosene was to be distributed. When the hawker or the cart owner kerosene sellers have proved that they had about 50 litre of kerosene in the stock it can safely be inferred that even the Anjuman Sahakari Grahak Bhandar should also have some stock of kerosene. It is also penetrable explanation that since on account of riot everything was burnt, the stock registers and other record revealing stock of the kerosene also must have been burnt and that the concern witnesses therefore may not be able to produce any documentary evidence.

(b-3) In the opinion of this court how much of kerosene was available is not important when it is very much probable that the kerosene can be in the stock with this shop and in any case, it should be much more than 50 liters which even hawker had on that day.

(b-4) In fact the IO should have investigated about the source of the inflammable material without which such a large scale burning or torching could not have been possible on the fateful date but none of the previous investigators have bothered to do that and when the SIT took over, it cannot be possible to find out record from Civil Supplies Department for the supply and stock of the rationing shop for a period before 8 years. The serious lacuna of the kind can never benefit the accused and at the same time, cannot be taken into aide to falsify the witnesses as it amounts to adding injuries of the witnesses.

(b-5) If para 10 and para 22 to 25 are read together it is clear that the Anjuman Grahak Sahakari Bhandar should have reasonable amount of kerosene in its stock.

(b-6) If para 8, 9 and 9 except the omissions proved from those 2 paras are read together it stands proved that 45 goats were kept by the witness in the open plot opposite his shop and A-22 was leading the mob which took away the goats.

However, there does not appear any mens rea required for theft as it does not tally with the common intention and object, the accused were sharing.

(c) FINDING OF PW-239 :

(c-1) The presence and participation of A-22 stands proved beyond all reasonable doubt in the morning occurrence while A-22 was a leader of the mob along with other members of the mob.

(c-2) This witness proves police firing.

(c-3) It stands proved beyond all reasonable doubt that the witness was partner of Anjuman Grahak Sahakari Bhandar being run at Hussain Nagar on the date of the occurrence which had reasonable amount of kerosene in stock.

(c-4) The lacuna of the 1st I.O. and the limitation of the S.I.T. is noted in investigating on the stock of and use of kerosene from this shop.

81. PW-242 :

(a) The witness was residing at Hussain Nagar, who has witnessed the morning occurrence and the noon occurrence at 4.00 p.m. at Jawan Nagar khada where the witness saw A-10, Guddu and A-22 with weapon, on account of the occurrence the witness has left Khumbaji ni chali along with wife at Jawan Nagar where she fall down and has sustained negligible injury, the PW, his wife and son went to one terrace of Gangotri, the witness also had sustained some injury, the witness had suffered damages at his house and his household were robbed, the witness has identified A-22, Guddu had passed away, the witness could not identify A-10.

(b) CROSS-EXAMINATION OF PW-242 AND OPINION OF THE COURT :

(b-1) At para 2 the witness has specifically stated that he was residing at Hussain Nagar only for last one year of the occurrence. Considering which it is not just and proper to draw any inference of prior acquaintance. However, wherever the witness has correctly identified the accused, this finding shall not be applicable as no doubt is left out in the mind of the Court in such case, hence it is held that A-22 has been correctly identified by the witness and he also involves Guddu.

(b-2) The fact of damages in the house of the witness stands proved.

(b-3) No reason is highlighted or shown because of which the involvement of Guddu and A-22 can be doubted in the

crime as far as the occurrence at about 4.00 p.m. at Jawan Nagar khada is concerned where both of them were present with the weapon in their hands.

(b-4) At para 38 & 39 no material stand revealed to doubt the occurrence of 4.00 p.m., at para 41 & 42 the contradiction is on limited point as to at which place the mob was standing, but as a matter of fact on that day no mob was stationary. This question is absolutely insignificant and that considering overall material brought on record the witness proves the morning incident as well as the noon incident and in the noon incident he proves presence and participation of Guddu and A-22 and whereas A-10 is entitled to benefit of doubt.

The witness has also proved that he and his wife were injured in the occurrence who were treated at the camp.

(c) FINDING OF PW-242 :

(c-1) The witness is an eye-witness of morning and noon occurrence (at khada at 4.00 p.m.).

The presence and participation of A-22 and Guddu with weapon stands proved in the noon incident with weapon.

(c-2) The witness and his wife were injured and were treated at camp.

(c-3) The witness has suffered damages whose everything was robbed.

82. PW-243 :

(a) This witness has studied upto 4th standard, is residing at Patiya for about 35 years with his family, and is a rickshaw driver. According to this witness, at about 07 or 07:15, the witness saw PW 274 (Shri K.K.Mysorewala) to have come to Nurani Masjid and from there, he went to the old mosque (behind Nurani). The witness saw a mob wherein he saw A-22, Bhavani and Guddu, at another mob, he saw A-44 and the men of the mob doing stone-pelting, he saw police firing, he returned to his area about 11:00 a.m., he had sustained loss by burns in his house, he knows Guddu and Bhavani and identifies A-22 correctly and identifies A-17 instead of A-44.

(b) CROSS-EXAMINATION OF PW-243 AND OPINION OF THE COURT :

(b-1) At para-38 read with para-42, it becomes clear that at the SIT also, the witness has stated about the fact of the witness to have visited at about 07:00 a.m. at Milan Hotel, this tallies with the examination-in-chief of the witness, hence it is clear that the witness has visited Milan Hotel at about 07:00 a.m. on the date.

This also tallies with the testimony of PW 213 who claimed to have accompanied Shri K.K.Mysorewala while Shri K.K.Mysorewala desires to visit Muslim houses, Nurani etc.

(b-2) The witness states at para-9 to have seen the named accused in the morning occurrence, at para-40 and 41, the

witness has clarified to have seen occurrence from 07:00 a.m. to 09:00 a.m. which would mean that the witness has seen the named accused between this time. At para-47, it is clear that the witness has stated before the SIT that he is not an eyewitness of the attack on Masjid since it is little far from his house and that he has learnt about the attack from hearsay evidence.

If para-45 and 46 are read together, it is becoming clear that the witness has left from Milan Hotel before the attack on Nurani and Muslim chawls and has attempted to put hurdles at the Muslim chawls at about 10:30 a.m.

If all these are read collectively, it becomes doubtful that the witness has seen the named accused in the morning occurrence or not which is the only occurrence seen by the witness even according to him. The personal knowledge of the PW is doubtful about morning occurrence.

The doubt arising from the testimony of the witness should grant benefit to the accused. The judicial conscience is not satisfied about the genuinity of some parts of the evidence of the witness when many of the PWs have proved the morning incident to have taken place after 9 and when this witness as discussed state at para-40 and 41 to be at the site upto 09:00 a.m. Considering this, this witness is partly credible.

However, this witness is important to record the conduct of A-44 and for the observation of the Court which has also been observed during the testimony of another witness that there is notable similarity between A-17 and A-44. A-44

was not identified, no TIP hence benefit to A-44.

(c) FINDING OF PW-243 :

(c-1) The witness proves his presence at Milan Hotel near Nurani Masjid at about 07:00 a.m. which may be at the most upto 09:00 a.m., on the date of the occurrence and the fact that Shri Mysorewala on that day has checked up Nurani, old Masjid behind Nurani etc.

(c-2) Bhavani, Guddu, A-22 and A-44 are entitled to the benefit of doubt qua this witness.

(c-3) Though A-44 is granted benefit of doubt but the conduct of A-44 is notable while the witness went in the dock to identify the accused when A-44 has removed his spectacles which obviously to misguide the witness and A-44 could not control his smile reflecting his victory when the witness has indeed committed a mistake in identity.

83. PW-244 :

(a) The witness belongs to Gujarat state itself, hence knows Gujarati, resident of Hussain Nagar, Gali No.3, is an eyewitness of the morning occurrence wherein his son aged 7 years Nasiruddin was injured, the witness himself was injured, who both were treated at camp.

The witness has seen the noon occurrence while the mob came from the way of Uday Gas, this mob was led by A-18 who has in fact shown them to the mob by his finger and it is

for that reason they were attacked by the mob, the witness has heard many screaming at about 6 p.m. while they were at terrace of Gangotri. The witness has sustained damages in his house, the witness has given his application to SIT at Exh.1704,

The witness could not identify A-18.

(b) CROSS-EXAMINATION OF PW-244 AND OPINION OF THE COURT :

(b-1) As this Court has noted there is absolutely no similarity between the outer appearance, structure, height etc. of A-47 who has been identified by the witness for an on behalf of A-18 and A-18 himself. Secondly, at para-3 itself, the witness has stated that he was residing in the rental house at Hussain Nagar. This witness has nowhere stated that he was residing at Hussain Nagar for how many years. Exh.1704 is the application of the witness before the SIT wherein the witness has stated that his statement needed to be recorded since earlier the description of the accused has not been recorded and that the witness is an eyewitness of the incident. After this, the witness got an opportunity to give statement before SIT wherein as seems, the witness has given names of A-18, but still the witness was unable to identify A-18. Hence, the chance of mistaken reference of A-18 cannot be rule out. Moreover, there is nothing on record by which the Court would be justified in drawing inference of prior acquaintance between the witness and A-18. Exh.1705 is the printed application of the witness which is also not revealing any material in the tune of the examination-in-chief. The PW did not identify A-18, TIP was not held hence, A-18 should be granted benefit. Hence, qua

this witness, A-18 is entitled for benefit of doubt about his involvement in the crime.

No doubt is left out in the judicial mind that the witness is an eyewitness of the morning occurrence and that he and his son were injured in the morning and noon occurrence.

(c) FINDING OF PW-244 :

(c-1) The witness is an eyewitness of morning and noon occurrence.

(c-2) The witness and his son Nasiruddin were injured in the occurrence who were treated at camp.

(c-3) A-18 is granted benefit of doubt qua this PW.

84. PW-247 :

(a) The witness is an illiterate, widow, aged woman, who was self employed in 2002 and was living at Pandit ni chali, ST Workshop, Naroda, whose eldest son Mohammed Yunus Mohammed Razzak Ansari had died in the occurrence.

The witness and her son Mohammed Yunus upon hearing the clamour all around along with shoutings went inside the area at Hussain Nagar on the backside of his house who went at the house of PW 158, who was brother-in-law of the eldest son Mohammed Yunus.

The witness and others went towards Gopinath

Gangotri and were cordoned between two mobs at about 6.00 p.m., in the mob the witness knew Bhavani and A-22, the men of the mob has thrown stones on her son and then beaten him with pipe on his leg and then burnt him alive who died there which the witness saw. The witness also saw that Salim and Wasim were thrown alive in the burning fire who were children of one Aziz, brother-in-law of her son. The witness also saw that wife of PW 158, PW 205 was dragged in the nearby lane by four persons whose name is Zarinabanu, those who were saved went to terrace of Gangotri, at night when they came down from terrace they saw Zarina in naked condition who has sustained head injury and whose hand was cut off, she was covered by some of them, they then took Zarina to the relief camp from where she was sent to V.S. Hospital.

At the time of occurrence the witness knew Bhavani and Suresh as they were residing in the same locality and were frequently visiting their area, Bhavani had died, the witness is not sure about her ability to identify A-22.

(b) CROSS-EXAMINATION OF PW-247 :

(b-1) If para 17, 19, 21 are collectively perused it is very very clear that the witness was in fact knowing A-22 and Bhavani very well and that in the facts and circumstances of the case, and in light of the testimony their prior acquaintance can be seen but, should not be inferred as to whom the PW know as A-22 is doubtful.

(b-2) At para 22 it is getting confirmed that the witness and PW 158 were together on that day, PW 158 and even

Zarina have not shared the occurrence with the PW, this is obvious since the sister of PW 158 married with deceased son of the witness. There is bound to be social hesitation.

(b-3) It is also very natural attitude of the witness that she has not shared anything with the social leaders of the Muslim community as she was not required to do so when she has given a printed complaint mentioning the death of her son in the occurrence.

(b-4) The uniform mechanical statement of the SIT has been repeated, the complaint of the witness is also on record at Exh.1776/22.

As is clear from the note below para 29 in the statement of 12/05/2002 (which also gets confirmed from the testimony of the concerned), the witness has given name of Bhavani and A-22 as were involved in the homicidal death of her son. Even in the statement dated 17/07/2002, the mention of the two accused to have been present in the mob, the fact of death of the son of the witness and the fact that he was burnt pouring kerosene on him have all been stated by the witness. This shows that the witness is consistent right from the year 2002 and is consistently telling that Bhavani and A-22 were involved in injuring and then burning alive the son of the witness, but since neither TIP was held nor the PW identifies A-22 he needs grant of benefit.

(b-5) From the other part of the cross examination it clearly emerges that there is no doubt about the fact that the witness is an eye-witness of the homicidal death of her son and

that the omission shown that of para 7 & 8 are not at all material omission whereas the other omissions are shown to be of 2002. How, the statements of 2002 are insignificant have already been discussed hence need not be repeated.

The witness is truthful and there is no reason to doubt the version of the witness.

(c) FINDING OF PW-247 :

(c-1) This witness is an eye-witness of the evening occurrence of *khancha* where :

(i) She has seen homicidal death of her son Mohammed Yunus Mohammed Razzak Ansari wherein, presence and participation of Bhavani stands proved beyond all reasonable doubt (evening occurrence).

(ii) A-22 is granted benefit of doubt qua the PW.

(iii) The death of Salim Aziz and Wasim Aziz the two sons of brother of PW 158 had occurred at the *khancha* occurrence.

(iv) The witness has seen dragging of Zarina Naimuddin (PW 205) by four men of the mob at *khancha* occurrence. She corroborates the violent attack on Zarina (PW 205) at the evening occurrence.

85. PW-249 :

(a) The witness is resident of Pandit-ni-chali for about

15 years and is a tanker driver, the witness has seen the morning occurrence wherein according to him, A-44 and A-33 were involved. The witness has not identified A-44 and A-33 in the Court.

Daughter Navazunishah has been injured in the occurrence who was treated at the camp. The house of the witness was damaged, the panchnama was drawn for the same, the witness has stated that the tanker he was driving was burnt on the date of the occurrence.

(b) CROSS-EXAMINATION OF PW-249 AND OPINION OF THE COURT :

(b-1) From the deposition, nothing emerges out which can be linked with prior acquaintance of the accused with the witness, no TIP was held and the PW did not identify A-33 and A-44 in the court. Hence the accused needs to be granted benefit of doubt qua this witness.

(b-2) The cross-examination based on the statement of 2002, is not significant and has been discussed at Part-2.

(b-3) From the entire cross, no doubt is created against the fact that the tanker driven by the witness was burnt on the date of the occurrence, the witness has sustained damages at his home and his daughter was injured in the occurrence.

(c) FINDING OF PW-249 :

(c-1) The daughter Navazunishah of the witness was

injured in the occurrence who was treated at camp.

(c-2) The tanker driven by the witness has been burnt in the occurrence.

(c-3) A-44 and A-33 are granted benefit of doubt qua this witness.

(c-4) The PW is eyewitness of the morning occurrence.

(c-5) The witness did suffer damages at his house in the occurrence.

86. PW-250 :

(a) The witness is an illiterate Muslim widow woman, was residing at Pandit-Ni-Chali in 2002, has seen morning occurrence wherein she saw A-23 and deceased Raju Chhara who were doing stone-pelting at that point of time, the witness went to Gangotri Society thenafter, the witness has also seen A-23, Ashok Chhara and deceased Raju Chhara (Sr.No.7 in the charge as deceased accused) doing stone-pelting in her chawl, damages was there in her house, the witness has deposed that since many years have passed, she would not be able to identify both the accused, thus the accused were not identified in the Court.

(b) CROSS-EXAMINATION OF PW-250 AND OPINION OF THE COURT :

(b-1) At para-9, the witness has admitted that on the date

of the occurrence, she has seen both the accused for the first time. At para-5, she has stated to have seen the two, there is nothing on record as to for how many years, she resides at Patiya and whether is there any other source for her to know the accused considering the entire examination-in-chief and para-9, this seems to be the case wherein the Court is unable to draw any inference of prior acquaintance with the accused named, no TIP was held, hence all the accused named are held to be entitled to benefit of doubt.

(c) FINDING OF PW-250 :

(c-1) A-23 - Ashok Chhara and deceased accused Raju Chhara shown at Sr.No.7 in the charge are granted benefit of doubt qua this witness.

(c-2) This witness is an eyewitness of morning occurrence.

87. PW-257 :

(a) The witness is an illiterate man, residing at Jawan Nagar since last 20 years, doing business of grocery and green vegetable from his house itself, has witnessed the morning incident, who were doing ransacking and breaking the things into pieces at Masjid, doing stone-pelting etc., the men of the mob has weapons like scythe, sword etc. the mob has also beaten Imam Saheb of Masjid. The witness has then returned to her house.

The witness is also an eyewitness of the breaking of

the wall of Jawan Nagar at 4:00 p.m. who deposes that the person in the mob who has broken the wall were Guddu, A-22, who had gupti in his hand, Guddu was seen killing one woman by sword and then burning her pouring kerosene on her, A-22 was killing women with Gupti, there was Bhavani Singh also who was giving signals to the men of the mob, upon which signals, the men of the mob were coming to chawls and were looting in the chawl. The witness was there upto 05:00 p.m., then went to the terrace of Gangotri, the men of the mob were beating and killing at Jawan Nagar, four boys of the mob have made one woman naked and then raped her at about 06:30 p.m. After seeing this, the witness changed the terrace of Gangotri from where also he saw violence on one woman who was severely beaten, the witness also saw death of Shahrukh (son of Zakir Hussain) who was aged 5 years and was thrown in fire. The house of the witness and all his material to sell for his shop was looted and damaged.

Guddu and Bhavani had died, the witness has identified A-22.

(b) CROSS-EXAMINATION OF PW-257 AND OPINION OF THE COURT :

(b-1) The witness has been confronted on his statement of the year 2002 which the witness states to have never been written, the witness volunteers that he has given only one statement and that too before the SIT. The witness states that only panchnama has been drawn for the damages sustained by him.

(b-2) At para-19 and 20, omissions have been suggested, but saying 'mobs to have been assembled in Naroda Patiya area' or saying that 'mobs were opposite S.T.Workshop' is in fact not a contradiction as the witness has stated Naroda Patiya very often for the area inclusive of S.T.Workshop. This in the opinion of the Court, is not a material contradiction at all.

At para-4, the witness has stated that 'hearing this, he came out of his chawl at the corner of S.T.Workshop'. In the fact, the witness has not omitted this to be stated before the SIT because, at the SIT, the witness has stated that the witness went outside (from his chawl) and stood. There is absolutely no material omission.

(b-3) At SIT, the point that mob has come from 2 to 3 directions has been stated by the witness whereas before the Court, he said that the mob came from Krishna Nagar, Mahajanya Vas and from Patiya. In the fact of the case, it is neither omission nor contradiction, in fact, the witness has stated one in the same thing in other words which shows that the witness is natural.

(b-4) In the same way, at para-8, it is clear that the witness has involved Guddu and Suresh in the mob which broke the Jawan Nagar Wall, in the SIT, he has stated more than this and even name of Bhavani Singh has also been stated, hence there is neither any contradiction nor any material omission. At the most, he has omitted name of Bhavani and the fact that the Muslims were beaten and burnt which he has stated in the SIT, but this omission in no way prejudices the named accused, hence it is not at all omission and that too a

material omission.

(b-5) The version at para-8 also does not suffer from any omission or contradiction as in the SIT, the witness has stated that A-22 was killing with gupti, but before the Court, he has stated that he was killing with gupti to women. Even if the women word is a new addition in the Court version in comparison to SIT version, it does not fall within the category of contradiction or material omission.

Even if, the word women is taken out from the Court version, the fact remains that A-22 was involved in killing the people at site with gupti, which is involving A-22 in the crime.

(b-6) Para-24 and 25 are confirming the fact that the witness is indeed an eyewitness of the morning occurrence.

(b-7) At para-27, from the suggestion of the defence, it is getting very very confirmed and clear that Mahajanya Vas, which is the address of many chhara accused is very close to the site of the offence.

(b-8) Perusal of para-29 with the examination-in-chief and even the relevant cross, it stands confirmed that Guddu, Bhavani and Suresh were present and have participated in the noon occurrence.

(b-9) The witness has also seen the rape occurrence by four men on one woman. This supports the say of only one such occurrence of PW-205 as proved on the record.

(b-10) The fact that the witness is residing in the area for 20 years and is doing business for last 15 years and the fact that at para-33, the suggestion to the witness is after the occurrence, A-22 has not met him itself shows that prior to the occurrence, A-22 has met the witness, hence it is a clear case of prior acquaintance with the three accused who all resided in the same area.

(b-11) The witness is an eyewitness of the occurrence of Shahrukh who was thrown in fire and was burnt alive. At this point of time, the witness has also seen physical violence on one woman committed by the mob.

From the facts and circumstances of the case and when the witness states about the occurrence to have been seen from terrace of Gangotri, it is linking with the occurrence of evening at Water Tank.

(c) FINDING OF PW-257 :

(c-1) The PW corroborates the rape on a woman by four men which corroborates Zarina occurrence (of PW 205).

(c-2) The witness is an eyewitness of the morning occurrence, noon occurrence and evening occurrence.

(c-3) The witness proves the presence and participation of Guddu, Bhavani and A-22 in the noon occurrence at Jawan Nagar Wall.

(c-4) The witness has suffered damages at his house and

his business place, which were one and the same.

(c-5) The witness has seen from the terrace of Gangotri the homicidal death of Shahrukh Zakir Hussain who was burnt alive in the evening occurrence. (The death of Shahrukh Zakir Hussain was result of the fatal injuries sustained by the deceased in the occurrences.)

(c-6) Death in the noon occurrence have been recorded by killing, cutting, burning, etc.

88. PW-258 :

(a) The gist of the examination-in-chief of the witness is as under :

This witness has studied upto 5th standard, is resident of Pandit-Ni-Chali behind Nurani for last 30 years, is a licenced seller of kerosene for last 16 years,at the end of the day, the witness used to park his cart with kerosene opposite Nurani where according to him other such 3-4 carts were being parked. He has kept his cart alongwith 40 litre of kerosene as usual opposite Nurani on 27/02/2002, the witness is an eyewitness of the morning occurrence, the mob has taken out kerosene from his cart, thrown it on Nurani and burnt Nurani, they have entered into the Nurani, he has seen A-44 and A-41 in the mobs. A-44 and A-41 were provoking the men of the mob, the witness alongwith his family went to Jikarhasan-Ni-Chal to save himself, his house and kerosene cart were destroyed and damaged, the witness has identified A-44 correctly, but could not identify A-41.

(b) CROSS-EXAMINATION OF PW-258 :

(b-1) The witness admits that he is not able to give his bill book registered for the kerosene showing purchase and sale and to show that on 27/02/2002, he has sold 160 liter of kerosene and has entered the said sale in his stock-register. The witness has given plausible explanation to the effect that all that has been burnt in the occurrence when his house and cart were burnt. Had the PW been speaking lie, he would have also stated about the 160 liters kerosene also to be in stock which shows that the PW is giving truthful account.

(b-2) The witness admits that he has not filed any complaint for the loss of kerosene, he had on the date of the occurrence. The witness has even not given any complaint to the Civil Supply Department of Government.

(b-3) In the opinion of this Court, there is nothing to be surprised about in the fact situation and having witnessed such a ghastly crimes and not being at home, but being at camp and other situation and more particularly, grip of tremendous fear would naturally not permit the witness to file any complaint etc., but that does not mean that the witness is speaking lie.

(b-4) At para-18 read with the voluntary statement of the witness clarifies that the witness speaks truth and his choosing different words at SIT does not mean that what he has stated before the Court is not true and correct. The witness was found quite truthful and was not doing any false involvement and was a kind of person who was not noticed as was speaking lie.

(b-5) Para-26 shows that the witness was knowing A-41 from previously. Para-27 is a question after the riot which indirectly conveys that before riot, the witness did have prior acquaintance even with A-44. Even para-31 very clearly and firmly establishes prior acquaintance of the witness with A-44 where the witness has also properly and correctly described the business and place of business.

(b-6) Para-29 shows how truthful the witness is, para-30 clearly establishes that A-44 and A-41 were shown as leaders of the mob which has also been stated by the witness before SIT, but the PW has not identified A-41 and even TIP was also not held hence it is unsafe to believe involvement of A-41 in the crime because the PW only testifies involvement of A-41 without identity. The reasonable doubt remains as to who was understood as A-41 by the PW. This witness tallies with PW 233 who is also a kerosene seller.

(c) FINDING OF PW-258 :

(c-1) This witness proves that 40 liters of his kerosene has been used by the mob in the riot and for attack on Nurani.

(c-2) His house and cart of kerosene were destroyed and damaged.

(c-3) The witness is an eyewitness of morning occurrence who proves presence and participation of A-44 in the morning occurrence including attack on Nurani beyond all reasonable doubt.

(c-4) A-41 is granted benefit of doubt qua this PW.

89. PW-260 :

(a) The witness is an illiterate woman, resides for 25 years in the chawl of Dhanurdhari Mata with her family. She has seen the morning occurrence wherein she herself, daughter Mehmooda and son of Mehmooda, Taufiq were injured in the stone-pelting at the SIT. They went to the house of Bekariwala.

From that house, they saw the noon occurrence of Muslim chawl where she saw A-44 and A-22 as leaders of the mob, Guddu and Bhavani were also there in the mob who all were burning men, tyres, throwing it on the roof-top of the houses even the house of the witness was burnt by A-44, though she tried to save the house, she could not do so, ultimately taken to camp, entire house is destroyed. The witness has correctly identified A-44 and A-22 Bhavani and Guddu have died.

(b) CROSS-EXAMINATION OF PW-260 AND OPINION OF THE COURT :

(b-1) At para-12, the suggestion to the witness shows that the chawl of the witness is after the Pandit Chawl, which is inside Imambibi Chawl, at about 08:00 a.m., witness and other went to public water tap.

(b-2) The witness is aware of the topography for which

she was asked at length. From para-13, it is clear that the initiation point was Bipin Auto Centre of A-44, there was one hall beside the Jawan Nagar Khada (pitfall) (this hall has been referred by A-52 saying that the watchman and the family member of the watchman were done to death), in this very paragraph, it has been confirmed by the defence that that was the only hall there at that time. (This reveals that A-52 refers a watchman and death of his entire family was the watchman of this hall.)

(b-3) The cross-examination of the witness on topography is quite extensive but no doubt whatsoever is created about the truthfulness of the witness.

(b-4) At para-19 and 20, the fact of the attack on Nurani Masjid stands proved, the witness has been confronted on the statement of 2002.

(b-5) The confirmation by SIT of every previous statement as showing it to be true and correct, being a uniform sentence has been inferred to have been written by the SIT as formal sentence in every statement and merely that cannot be hurdle in appreciating what the witness has stated before the Court.

(b-6) The facts stated at para-6 that the men of the mob were throwing burning tyres on the roof-top needs to be kept out of the consideration since has been omitted to be stated before SIT.

Other mentioned omissions of para-6 are not at all material omission, it rather shows how natural the witness is.

(b-7) If para-7 to 9 of PW 327 is perused, it is becoming very clear that the witness has undoubtedly involved A-22, Guddu and Bhavani even before the SIT in the noon occurrence.

(b-8) As is clarified at para-35, the treatment of the witness, her daughter and son of the daughter were done at Camp.

(b-9) From the entire deposition, it is clear that the witness is absolutely in know of the area, people at the area and she has referred the accused clearly revealing her prior acquaintance with them when she is residing in the area for about 25 years.

Considering the discussion, the witness is held to have been involving Guddu, Bhavani, Suresh and A-44 in the noon occurrence. The fact of the involvement to have been stated before SIT has not been challenged and that it stands proved beyond reasonable doubt.

(c) FINDING OF PW-260 :

(c-1) The witness is an eye-witness of the morning occurrence.

(c-2) In the noon occurrence, mob was burning men, tyres, torching dwelling houses.

(c-3) The witness herself, her daughter Mehmooda, and

son of her daughter, Mehmooda, named Taufiq were injured in the occurrence and were treated at camp.

(c-4) The presence and participation of A-44, A-22, Guddu and Bhavani stands proved beyond all reasonable doubt in the noon occurrence at chawl.

90. PW-261 :

(a) The witness knows only Malayalam language and was found struggling to express in Hindi, she is illiterate widow woman and is residing for last 33 years at Naroda Patiya with her family.

The youngest son of the witness named Maiyuddin had died in the occurrence, the witness is a witness of morning occurrence, she saw police firing and tear gas by police, she went to Gangotri taking all her children except the crippled Maiyuddin who was on the terrace of Madressa and was declining to join the mother. She went to the house of Abdulbhai Ghadiyali for refuge, she returned home back to take Maiyuddin, but by that time, the mob of the Hindu came, Maiyuddin told to this mother witness to go and hide herself at Madressa and Maiyuddin went inside their house.

The mob of Hindus came, did ransacking, looting, broken the door and taken out crippled Maiyuddin outside the house. This mob was consisting of A-2, A-22, A-26 and Guddu. Since the insistence of the mob was not obeyed by the deceased Maiyuddin which was to speak 'Shri Ram', Maiyuddin was attacked by weapons and was burnt alive there pouring

petrol and kerosene on him, which all has been seen by the witness from the window of Madressa, then after the witness went to Gangotri through S.R.P. Quarters.

At Gangotri, one godown was there where policeman came, shown the PW and others the way to Naroda, while going through that shown way, Hindu mobs came from both the sides, hence the witness returned. Jay Bhavani met there, he has shown one room, but since there was danger there, the witness even left from there, the witness and some of her family members took shelter at the top of the temple where they were shown by one woman (to the mob). Ultimately one gentleman present there has saved them, keeping them inside the temple and locking the temple from outside, thenafter, the witness was taken to terrace of Gangotri fromwhere she went to camp.

In the occurrence of stone-pelting, she was injured and took her treatment at camp.

All her household and other things were destroyed.

The witness knows all the named accused, Guddu had died. A-22, A-2 and A-26 were correctly identified.

(b) CROSS-EXAMINATION OF PW-261 AND OPINION OF THE COURT :

(b-1) At para-28, the witness is confronted on the aspect that she has not shown the house of Ghadiyali to the SIT, the temple and the terrace of Gangotri Society where on the date

of the occurrence she was hidden.

In the opinion of this Court, this cross does not bring on record anything as it is to be understood that SIT has investigated after about 8 years, and there may be many more changes in the sites and even if the sites have not been shown, it makes no difference

(b-2) Exh.1952 has not at all held to be genuine P.M. Note of the deceased Maiyuddin for numerous reasons as has been discussed in the chapter of postmortem.

Exh.1303 has also been held to be not a genuine identification panchnama of deceased Maiyuddin.

But, the facts which stands proved beyond all reasonable doubt by the mother of the Maiyuddin is that Maiyuddin was 18 years old crippled boy who was done to death in the occurrence and who died homicidal death.

(b-3) The refusal of the witness qua 2002 statement at para-32 to 35 have no significance as the record of 2002 is not reliable.

(b-4) At para-36, the witness states that the witness herself has seen the occurrence and what she has conveyed again and again is the sequence of the occurrence was as narrated by her.

What is important to be noted here is as the defence has brought the part of 2002 on record and as has relied upon,

it is clarifying that right in the year 2002, the witness has involved Guddu, A-2, A-22, A-26 in killing and burning her son, Maiyuddin.

(b-5) At para-38, the witness again clarifies the place of the occurrence to be her own veranda (Otla/Platform) and the tormentor were the four named accused and she herself is eyewitness, her son was first beaten by different weapons by the accused - the witness clarifies at para-39 that what she refers as otla is an open land, three feet away from her house, the suggestion from the defence confirms that he was burnt alive pouring kerosene or petrol which she herself has seen and it is after death of her son, she left the place of Madressa from which she has seen her son dying.

In the observation of this Court, the witness was found to be very truthful and is none else but the mother of the deceased young boy and that she does not seem to have any reason to falsely involve any of the accused.

(b-6) The suggestions given to her about giving some interview to some magazine etc. in no way falsify the witness as even if the interview has been given, the said cannot be termed to be earlier statement taken in the investigation and such version cannot be compared with the version before the Court or version before the IO.

(b-7) The witness resides in the area for last 33 years, at para-45 and even in the statement of the year 2002, the witness has very firmly and clearly state that she knew the accused very well, A-26 is residing in her street.

The attempt of having any enmity with A-26 thoroughly fails as the witness has not transacted anything with the sister of A-26 and even the witness at para-57 clarifies that she does not even know what is the name of the sister of A-26. Considering the said , this Court firmly believes that this witness has proved the death of her son Maiyuddin who is not heard or seen from 2002 and who was seen dying by the mother of the said Maiyuddin.

A-2, A-22, A-26, Guddu and Bhavani are all resident of the same locality where the witness resides for last 33 years, there is enough material to draw inference of prior acquaintance with the witnesses, however, the fact needs a notice that this witness has involved A-2, A-22, A-26 and Guddu for the homicidal death of her son whereas Bhavani has met her while she was going to Gangotri and has shown her a room. Showing the room, cannot be said to be an incriminating act, hence Bhavani cannot be said to have been involved in the noon occurrence and in homicidal murder of her son by this witness. Benefit to Bhawani.

(c) FINDING OF PW-261 :

(c-1) Son of the witness, Maiyuddin, aged 18 years, a crippled boy was done to death in the noon occurrence.

The complaint for the death of Moiyuddin was filed by the husband of the PW which is on record vide EXH.1776/10 dated 14/03/2002.

(c-2) The presence and participation of A-2, A-22, A-26 and Guddu stands proved beyond all reasonable doubt in the homicidal death of Maiyuddin, son of this witness, aged about 18 years in the noon occurrence on the date at the site.

(c-3) The witness herself was injured in stone-pelting and was given treatment at camp.

(c-4) All the household and house of the PW was destroyed, looted, damaged in the occurrence.

(c-5) Deceased Bhawani is granted benefit of doubt qua the PW.

91. PW-272 :

(a) This witness is a treating doctor who has treated A-32 at the Maitri Hospital when, A-32 was admitted at the Hospital in the morning of 28/02/2002 and when he was admitted at I.C.U. there.

(b) This witness produces the indoor register of the Hospital at Exh.1810. According to entry in the said register, A-32 was brought to the Hospital at about 11:30 a.m. of 28/02/2002 for having sustained head injury by him on the date of the occurrence at Naroda Patiya where there was attack. The history was given by A-32 himself. The witness doctor gave a Vardhi to Naroda Police Station it being M.A.C. Case. The accused No.32 was admitted in the Hospital from 28.02.2002 to 02.03.2002 and thereafter was discharged.

(c) The record tallies with the oral evidence of the witness, which reveals that A-32 was injured at Naroda Patiya in an attack there for which he was admitted in the Hospital and was treated there.

(d) After arresting A-32 and after adopting the post arrest formalities, the Investigating Officer has sought for sanction to prosecute A-32 from the Home Department, which was rejected as can be seen from the order of Home Department at Exh.2186.

(e) In light of the foregoing situation, it becomes extremely clear that there are lot of reasonable doubts for fixing criminal liability of A-32.

Firstly, the entire record proves the presence of A-32 at the site of the offence but then, merely that is not sufficient.

There is no overt act on the record revealing any act or omission to have been committed by A-32. That being so, it sounds fitting to grant benefit of doubt to the accused since no other evidence has been brought on record viz., documentary evidence, circumstantial evidence, recovery from the accused or discovery from the accused etc. Hence the following finding.

(f) FINDING OF PW-272 :

(f-1) A-32 is hereby granted benefit of doubt qua the charged offences.

(f-2) On the date of the occurrence, there was probability

for anyone to sustain injuries in the morning occurrence upto 11:30 a.m. or upto 12:00 noon.

92. PW-223 :

(a) This witness was watchman of the Uday Gas Agency, which was situated near Khada of Jawan Nagar. He deposed that he resides at Pandit Ni Chawli, Opposite S.T. Workshop for about last 25 years and that he used to do his job as watchman from 8:00 p.m. to 8:00 a.m. as his routine.

(b) On 28/02/2002 while he was going to his home from Uday Gas, he saw the morning occurrence. To save lives of his family members, he brought them from his residence to Uday Gas Agency where they all remained on that day. The witness say numerous members of the mob and heard clamour all around.

(c) At about 12:30 p.m. one vehicle looking like Ambulance came to Uday Gas Agency wherein there were about 25 persons who having unduly entered into the Agency insisted that the witness should give them Gas cylinders. The witness declined for the same and made them to telephonically talk with his employer, who too refused to part with gas cylinders, but, the members of the mob forcefully and coercively took away 20 - 25 cylinders from the gas agency, which was reported by the witness to his employer who in turn came in person and has filed his necessary complaint with the police station.

(d) While the witness was out, his residence was looted

and he had sustained tremendous damages for which necessary panchnama was drawn.

(e) There is no substantial challenge offered to the testimony of the witness. The suggestion was declined that the witness saw Acid, Glasses etc., also on the road. Numerous questions on topography were asked to this witness but in light of what has been discussed earlier, the opinion on topography by this witness is hardly important.

(f) This court opines that there is no material in the cross-examination to doubt the testimony which is supported by testimonies of numerous witnesses on record. The witness is natural and credible.

(g) FINDING OF PW-223:

The witness proves the morning occurrence and the robbing of 20 - 25 gas cylinders from Uday Gas Agency.

93. PW-271 :

(a) The witness is a laundry man running his business in the name and style of Poonam Laundry, which he was even doing in the year 2002. The witness was residing near Nurani Masjid at Kashiram Mama Ni Chawli. This witness is a hostile witness.

(b) While he was cross-examined by learned Special Public Prosecutor, it has been elicited that the witness is not deposing as per his alleged previous statement of the year

2002. It seems that even SIT has recorded statement of this witness.

(c) The witness has volunteered the statement that he knows Badal Chhara (A-50). He has heard the name of Badal Chhara. The witness though declined to have given his statement before SIT involving A-50, the same cannot be believed. As has been discussed, though there are certain shortcomings in the investigation of the SIT but then, there is no material to believe it that SIT would write any statement in a self-styled manner.

(d) The witness admits that Badal Chhara resides behind Nurani Masjid at the Mahajaniya Vas. At para-11, the witness was shown A-50. The witness pleads his ignorance about the identity of Badal Chhara. He has specifically stated that he only knows A-50 by name and he was not able to say for sure that the person shown to him is Badal Chhara or not.

(e) The suggestion given to the witness about prior acquaintance has not been accepted by the witness. In this situation, it does not sound to be prudent to infer what is specifically denied by the witness. The Court could have inferred the prior acquaintance if in the examination-in-chief the witness states incriminating facts and then from the facts and circumstances of the case if the Court finds material to infer prior acquaintance, the same can very well be done. But, since the situation is otherwise, it is imprudent to draw such inference as it doesn't suit with the basic principles of appreciation of evidence. Moreover, if part of the statement before SIT reproduced at para-9 is perused, there is no

revelation about the prior acquaintance of the witness with the accused. No TIP is held. That being so, the Court should not draw any inference of prior acquaintance and that, that makes the accused-50 entitled to the benefit of doubt.

(f) FINDING OF PW-271 :

(f-1) A-50 is granted benefit of doubt qua the deposition of PW-271 for the commission of charged offences.

94. PW-110 :

(a) PW-110 is a hostile witness who has deposed that he resides at Hussain Nagar for last 15 years, his father Ismailbhai Mansuri is missing right from 28/02/2002, he has seen the morning occurrence, he did witness the police firing, he has neither heard about nor seen his father right from the date of riot.

(b) He, along with other Muslims, was out while hiding themselves in between 6:00 p.m. and 7:00 p.m. and were trying to enter into SRP Quarters, but could not enter. It was later learnt by them that his father in fact went to Hirawadi at the house of one acquaintance and then he returned on the same date. But, he did not reach home and thereafter was never seen. He has seen A-36 whom he knows from his childhood who has shown them the way to go inside the SRP quarters and that day but, for his (A-36) help, they could not have saved themselves.

(c) The witness denies to have seen A-36 holding pipe in

his hands in the mob of Hindus and that after being declared hostile, the witness has admitted that A-36 is known to him from his childhood, he is worker of BJP, he is a social worker, he was residing at Hirwadi at which point of time A-36 was his neighbour and even today his brothers are neighbours of A-36.

(d) He partly agreed with the statement of SIT and partly disagreed. It is true that the witness seems to be resiling from his statement but, before coming to any conclusion it seems fitting to record here that it is an undisputed position that on the date of the occurrence when A-36 met him, he was in company of his brother viz. PW-146. PW-146 also supports the theory that as a matter of fact, A-36 has not done any overt act against the witnesses and even numerous accompanying Muslims, but has rather helped them in saving their lives.

This Court therefore humbly believes that larger interest of justice would be better served if there shall be conjoint reading of the testimony of this witness and PW-146. Considering the peculiar facts and circumstances, this Court has thought it just and proper to give a common finding for this witness and for PW-146, who has not been declared hostile by the prosecution.

95. PW-146 :

(a) PW-146 is the brother of PW-110, he resides at Lane No.3 of Hussain Nagar for last 18 years, he has also seen the morning occurrence, his father Ibrahimbhai Mansuri is missing right from the date of the occurrence.

(b) This witness deposes in specific that at about 5.30 or 6.00 p.m. while they started from Gangotri Society, he saw A-36 holding pipe in his hands. A-36 told them to go away, A-36 has shown them the way to go to SRP quarters from the back side of Gangotri Society. At the site he did not know any one except A-36 whom he identified in the Court.

(c) During the cross-examination, the information which has been elicited is, A-36 was his neighbour at Hirawadi. He admits that while he reached Gangotri, his brother PW-110 and other family members were with him and that there were about 30 to 40 Muslims with him on that date. They all went from the way shown by A-36. It is for that reason that their lives could be saved.

(d) In the opinion of this Court, this witness is not a hostile witness and has shown his loyalty to the prosecution side. This witness proves a very vital fact which links with the act and omission of A-36. It emerges very clearly on record that A-36 has saved life of about 30 - 40 Muslims even though his personal relationship was with PW-110 and PW-146. If these facts are kept in center, the soft attitude of PW-110 & 146 for this accused seems to be very natural and there does not seem to be anything got-up, fishy or tutored about it.

How one can forget that crucial day on which fateful day they were not only able to save their lives, but even were able to save precious lives of 30 to 40 other companion Muslims.

(e) It is true that A-36 was available at the site with the pipe in his hands, but, what he has done does not link him with the crime. It rather links him with his welfare attitude of being a friend in need by being friend indeed.

Considering the entire facts and situation on record emerging from the testimonies of the two brothers, benefit of doubt needs to be granted to A-36 for his presence along with pipe. Normally, such a gesture should have been viewed seriously had there been any prosecution witness to depose about any offences committed by A-36 on the fateful day.

(f) In light of settled position of law, when the accused is entitled to benefit of reasonable doubt, the same should be granted without any hesitation. This Court therefore opines that what is stated by PW-110 has a ring of truth and he does not treat administration of justice as his toy. What he states is that A-36 has saved his life, lives of his family members and companions on that day by showing them the right way to take refuge at a right place which stands proved beyond any reasonable doubt.

It is needless to add that both the witnesses are alive is for the gesture of A-36, according to both the witnesses. Hence, the following common finding.

(g) The A-36 seems to have joined unlawful assembly which stands proved from possession of deadly weapon and his presence at the site eventhough, it is quite far from his house for which he has no satisfactory explanation. This is about his objects and intentions.

His act and omissions show A-36 has later disassociated himself from the unlawful assembly and that is the reason to grant him benefit of doubt.

(h) COMMON FINDING FOR PW-110 & PW-146:

(h-1) PW 110 and PW 146 are eyewitnesses of the morning and evening occurrences.

(h-2) A-36 is granted benefit of doubt qua the testimonies of PW-110 and PW-146 and as it proves that he has saved lives of numerous Muslims accompanying these PWs, who were though unknown to A-36.

(h-3) Their father Ismailbhai Mansuri is presumed to have been died in the riot who is missing.

X * X * X * X * X * X * X

CHAPTER-III : OFFICIAL WITNESSES

1. PW-269 :

(a) PW-269 is the Chief Fire Officer on the date of the deposition and was Divisional Fire Officer at Danapith Fire Station in the year 2002. The calls for services of fire brigade were being received by his office through the telephone operator of the control room from where necessary instructions were being passed to the nearby fire station who would attend

the call.

(b) To record all the fire calls, occurrence book is being maintained, which shows the movement of the fire brigade officials and of the vehicles. The witness states that normally, all entries are regularly entered except the situation of xtraordinary pressures like they have faced during riot. It was clarified that in such circumstances many calls are not being written which are though attended to.

(c) SIT sought the information which was provided by the office of the witness and that vide Exh.1801 relevant 80 pages of the register have been produced on record.

CROSS-EXAMINATION OF PW-269 :

(a) It has been elicited in the cross-examination that the witness has stated before the SIT that on 27th February, 2002 and on 28th February, 2002 no fire calls have been received from Naroda Patiya, area surrounding Nurani Masjid and the area opposite S.T. Workshop (where Muslim chawls were situated).

(b) The witness has also stated about his personal supervision at the well wherein, after digging upto 5 to 6 ft. by the fire brigade staff, the investigation was made to find out whether there was any human remains or dead body etc., or not.

(c) This Court has inquired from the witness as to in the year, 2002, how many fire stations were under his control,

to which he has replied that Danapith, Naroda and Panchkuva fire stations were under the control of Danapith.

Normally, they have to attend about 8 to 10 rescue calls and/or fire calls on each day, but, on 28/02/2002 the calls were 100 times more than the usual calls and that in fact, they had no opportunity to properly locate as to which vehicle is going where and where from it has taken a turn and gone to attend another call.

He had said that on that date, numerous calls for Ambulance, fire, rescue and call to carry dead bodies were received and not for a single minute the telephone remained idle and the entire staff was continuously working.

(c-1) **Exh.1801:** - Exh.1801 are the 80 pages of the register. On internal page-7, 9, 15 there is entry of 5:30 p.m. of 27/02/2002, which shows the disturbances to have initiated after the Gordhra carnage on 27/02/2002 itself.

(c-2) At internal page-23 an entry of 10:02 a.m. shows that one Kamar Ali of Bhagyoday Hotel has given fire call. On page-24 another such fire call of 10:15 a.m. is on record.

The witness is right when he is saying that he has not received any intimation from the site of the offence for fire calls or rescue call etc., but, the register reveals that the disturbances were on going in Naroda police station area even at 10:02 a.m.

It needs a note that, though there is fire Shri K.K.

Mysorewala gives message to the police control room that “all is okay”. The register also shows that the signals in fact were already begun on 27/02/2002 itself from which Shri K.K. Mysorewala should have initiated detentive measures and other such measures but, it seems that he has not grasped the serious signals which the situation were sending him. It seems that his assessment for the situation was absolutely wrong.

(c-4) A-37 has raised the defence of denial specifying that on the date of occurrence she did not come to the site which is not penetrable to our reason.

She was M.L.A. of the area where such a serious disturbances were on going in the constituency, it cannot be believed that the M.L.A. would not come to the area at all. None of the police officers say that she has inquiring about law and order situation in the area which too seems to be very very common for the M.L.A. to inquire with the local police officer. The defence that nothing of such tying was done by the A-37 does not go with the principle of probability and course of natural events.

(c-5) While perusing the register at Exh.1801, an entry of the date of the occurrence is eye catching at internal page-41 where from it is getting clear that at about 2.15 p.m. A-37 has herself rang up and has given fire calls registering the fire to have taken place at Sahyog Petrol Pump on Naroda road.

(c-6) It is an admitted position that A-37 had her hospital in the area. Hence, it is not probable that she would not come even to her hospital for the entire day.

Secondly, without her calling no fire call would be registered on her name. But the register reveals such entry.

The question then comes is the M.L.A. who bothers for fire in the property of any individual would not bother for her entire constituency? This also brilliantly probabilize her presence at the site.

(c-5) PW-327 has also called upon the relevant information from the Chief Fire Officer in which case some of the pages of the register Exh.1801 have been sent by the Fire Officer which in turn, is produced by PW-327 which is on record at Exh.2324 and which tallies with the register.

Suffice it to say that the two documents and the testimony of this witness read with PW-327 proves that it is brilliantly probable that A-37 was very much present in the Naroda area.

(d) FINDING OF PW-269 :

(d-1) Probability of A-37 to be in Naroda Patia area is on record.

(d-2) The well was dug upto 5 to 6 feet but, neither any dead body nor any human remains were found.

2. PW-273 :

(a) This witness was the Administrative Officer of the

State Transport. He was called upon to testify on the stock position of the kind of inflammable at the S.T. Workshop then and about the presence of A-49, 57 and 59.

(b) The witness has deposed that High Speed Diesel and Engine Oil were in stock on 28/02/2002 at the S.T. Workshop. The furnace oil is nothing but the waste of the Engine Oil and that it being waste, is not accounted for. It has been clarified that the furnace oil was not in stock on 28/02/2002. Hence, any use of furnace oil in riot as inflammable is ruled out.

(c) The stock register of the S.T. Workshop has been brought on record by this witness vide Exh.1817 to 1819 wherein the facts stated in the testimony tallies.

(d) Vide Exh.1814 to 1816 the muster roll respectively of A-57, A-59 and A-49 have been brought on record to exhibit that all the three were on duty on the date of the occurrence. It has been submitted that none of them went outside while on duty.

(e) With reference to a question about the height of the compound wall of the S.T. Workshop, the witness has replied that though the wall was of good height, but, by climbing up on the drums from inside the wall, the outside view can be seen. This probabilize the allegations levelled by the victim of throwing the burning rags from inside the S.T. Workshop.

(f) This court is of the opinion that as far as this witness is concerned, he merely proves presence of A-49, 57 and 59 at their working place, which is very natural and routine act of

the accused. Merely because the accused have gone on their duty on the date of the occurrence, no criminal liability can be fastened on them except their overt act committing or enhancing the charged offences stand proved. It is an admitted position that this witness does not so prove.

(g) The allegation of the Muslim victims, inhabitants of Muslim chawls is to the effect that burning rags were thrown on their dwelling houses and on them from inside the S.T. Workshop but, there is no evidence to show that the said burning rags were thrown by one of the accused or by all the three accused.

To establish such allegation, the prosecution shall have to prove its case through the witnesses linking the accused with the act or omission, in absence of which though it is a matter of doubt that the three accused also might have thrown the burning rags, the same cannot be believed to be a proof. Doubt, however strong it is, can replace the legal proof. Since there is no evidence against the accused except for the fact that they were on their duty, which is obviously no crime, any one of the accused cannot be held liable for the charged offences. They are, therefore, entitled to benefit of doubt qua the charged offences.

(h) FINDING OF PW-273 :

(h-1) A-57, 59 and 49 have been granted benefit of reasonable doubt qua the witness.

(h-2) The probability of throwing burning rags from inside

the S.T. Workshop is on the record.

(h-3) There was no loss of any oil (inflammable) from S.T. on the date of offence hence, it is not possible that any oil of the S.T. having been used in the riot.

X * X * X * X * X * X * X

CHAPTER-IV: DOCUMENTARY EVIDENCES ON ADMISSION OF THE DEFENCE AND CIRCUMSTANTIAL EVIDENCE

(I) DOCUMENTS :

(a) Exh.2049 to 2075 :

(a-1) The documents have been exhibited by the consent of the defence. Out of these documents Exh.2069 and Exh.2070 are since related to accused. The remaining 25 documents need perusal.

(a-2) Exh.2062, 2064 and 2075 are Inquest Panchnamas respectively of Sofia, Zubeda and Shakina, which supports the homicidal death of the three.

(a-3) Exh.2071 is the document of seizing the blood stained clothes, which were cut off apparently seem to be because of use of sharp weapon.

This is the panchnama of the clothes of one Mohammed Rafi Adam Shaikh while collecting his blood

stained clothes. This panchnama reveals that in the occurrence there was use of sharp edged weapons which supports the prosecution case.

(a-4) There are about 22 Yadis for the sanction of drawing inquest, which shows the series of homicidal deaths to have taken place on that day.

(a-5) Here, an important point needs a discussion. It is forcefully submitted by the defence that since the complaint was ante-dated and ante timed, the C.R.No. has not been inserted in the inquest panchnama as the inquest panchnamas were drawn first in point of time and later the complaint was written. This submission has been examined and it is found that Exh.2051 is dated 02/03/2002 and even Exh.2067 is dated 7th March, 2002. But even then there is no insertion of C.R. No. in these documents. This fact proves that there is no such procedure of inserting C.R. No. or say, there is no provision by which non-insertion of the C.R. No. in the document would create any reasonable doubt about the genuineness of the documents. Had it been true, the non-insertion should only be in the inquest or in the yadi to draw inquest written on 1st March, 2002 as, according to the defence, the complaint was registered early in the morning of 01/03/2002 but, as a matter of fact, the yadis to draw inquest was written on 01/03/2002, Exh.2051 and 2052 of 02.03.2002, Exh.2053 of 04.03.2002, Exh.2054 of 05/03/2002 and Exh.2056 of 10/03/2002, the draft remains same, which shows that non-insertion of C.R. No. in the yadi dated 01/03/2002 there is nothing to be doubted about. This submission is therefore found worthless.

(a-6) Exh.2051 onwards all the yadis for the permission to draw inquest is showing different names of the deceased for whom even the inquest panchnama and even the P.M. Report is on record, which would all, if read collectively, provides a very strong support to the prosecution case.

(b) Exh.292 to 317 :

(a-7) Exh.292 to Exh.317 are all the documents which have been exhibited as were admitted by the defence. These documents are F.I.R. under Section 154 of Cr.P.C. respectively for I-C.R.No.100, 111, 115, 117, 127, 129, 130, 153, 161, 162, 163, 164, 176, 179, 180, 181, 182, 183, 184, 185, 187, 188, 204, 208, 210 and 238 all of 2002. These F.I.R.s are based on different complaints registered from 28/02/2002 to 15/05/2002 which all are about the occurrence - the subject matter of this trial.

In these 27 complaints, there are merger of about 121 complaints and that these documents being F.I.R.s of the said complaints, all the complaints in form of documentary evidence have come up on record which also is providing strong support to the prosecution case.

(c) Exh.318 :

Exh.318 is also the FIR which is admitted by the defence and it is the FIR of the complaint of I-C.R.No.267/02. This complaint has in fact not been merged in I-C.R.No.100/02 by the order of the Police Commissioner, Ahmedabad City. The complainant Anisha, daughter of Kasambhai has not been

examined as a witness by the prosecution, but even this document admitted by the defence proves that the occurrence as alleged did take place.

(d) Exh.2131 to 2163 :

(d-1) Exh.2131 to 2163 are the documents which are yadis to have been issued to the Police Surgeon, Civil Hospital to see to it that the relatives of the deceased are given respective postmortem notes of their deceased relatives. From these yadis, PW-285 wrote names on the P.M. of unknown dead bodies basing upon his guess work.

(e) Exh.532, 553 and 1207 :

(e-1) PW 78, 85, 175, 182, 204, 227 are originally the complainants who have given printed complaint-application which have been brought on record during their testimony.

Exh.532, 553 and 1207 were brought on record during the examination-in-chief of the respective complainant by the prosecuting agency.

(f) Exh.1231, 1412 and 1616 :

Exh.1261, 1412 and 1616 have been brought by the defence during the cross-examination, on the record.

Exh.1412 is involving Guddu, A-44 as BJP worker, A-41 with his address, A-22, A-25 and Bhavani with their addresses.

Exh.1616 involves A-44 and A-33. Exh.1207 involves A-44, Guddu, A-10, A-41, A-22 and Bhavani.

Exh.532 involves mobs of R.S.S. and Bajrang Dal, in a way this complaint is for damages like Exh.553 and 1261.

In nutshell, it needs a note that right in the year 2002 itself many of the complainants have involved different accused. Had their versions been faithfully recorded, all these would have come out in the investigation.

(g) Exh.1801 :

This register of fire brigade shows an entry on the name of A-37 as, fire call for Sahyog Petrol Pump at Naroda at 2:15 p.m. of 28/02/2002 but, not a single call is recorded for Naroda Patia area inspite of the fact that, numerous houses and shops were burnt.

In this register, there are two entries for burning the shops of Muslim on 27/02/2002 at evening, but still, no actions were initiated by Shri K.K. Maysorewala for investigation or as effective measures.

(II) CIRCUMSTANTIAL EVIDENCE :

(a) The documentary evidence from Exh.2049 onwards and more particularly, Exh.2049, 2050, 2052, 2060, 2065 and 2066 etc., are worthy to be read wherein the ghastly circumstances in which the charged offences were committed, stand proved. At Exh.2049 dead body of two males were found

lying near the wall of S.R.P. compound.

(b) At Exh.2050 the permission to draw inquest has been sought for three different dead bodies, inclusive of one dead body of a child whose dead body was noticed to be in rickshaw near Bungalow No.32 of Gangotri Society. This dead body was lying in rickshaw and that this description proves that a child was burnt either alive or after killing him, putting him inside the rickshaw in the public street.

(c) At Exh.2052 dead body of one male was found from compound of one house at Hussain Nagar, which shows that how openly the homicidal deaths were committed on that date.

(d) At Exh.2060 and even from Exh.2066 human remains have been noticed for which permissions to draw inquest were sought for. These two documents show how inhumanely the victims were burnt alive on the date of the occurrence, because of which their sex is even unidentifiable one. Hence, there is no question of anyone to identify them.

(e) At Exh.2065 there is contents that a dead body of a child is found from the house, which house was burnt while the child was inside the house. This is in relation to the mass burning of houses at Muslim chawls on that day.

(f) As discussed while appreciating testimony of PW-269, Exh.1801 and Exh.2324 reveal that in spite of horrifying torching took place at the site of the offence, none of the responsible persons has telephoned for fire calls. This has to be understood while viewing the video cassette shot on

11.03.2002 by the I.O. No.2 wherein torching all around, ruining everything, damage and destruction, all in black colour only can be seen, which shows that the situation was horrifying on the date of the occurrence.

[A] FINAL CONCLUSION OF PART - 5 :

Following persons have been proved to have been died in the occurrence in homicidal death which stand proved through different PWs beyond reasonable doubt.

Sr. No.	Name of the deceased	Proved by which PW	Involves which accused
1	Sharif Iqbal (son of PW 203 and maternal brother of PW 37)	PW 37, 203, 162	A-22, A-44, A-26, A-55 & deceased, Guddu, Dalpat, Bhavani
2	Siddique	PW 37, 162	A-22, A-44, Guddu, Dalpat & Bhavani
3	Kudratbibi (Mother of PW 72)	PW 72, 158	Guddu, Bhavani, A-22, 26, 28
4	Mehboob (Brother of PW 72)	PW 72	Guddu, Bhavani, A-22, 26, 28
5	Shabbir (brother of PW 72)	PW 72, 158	Guddu, Bhavani, A-22, 26, 28
6	Jubaidabibi (sister-in-law of PW 72)	PW 72	Guddu, Bhavani, A-22, 26, 28
7	Shabnam (niece of PW 72)	PW 72, 229	Guddu, Bhavani, A-22, 26, 28
8	Shamina (niece of PW 72)	PW 72	Guddu, Bhavani, A-22, 26, 28
9	Asif (nephew of PW 72)	PW 72	Guddu, Bhavani, A-22, 26, 28
10	Nadim (nephew of PW 72)	PW 72	Guddu, Bhavani, A-22, 26, 28
11	Abdul Wahab (Father of PW 65)	PW 65	NONE
12	Hanifa Khatun (Mother of PW 65)	PW 65	NONE
13	Ismailbhai Mansuri (father of PW 110 & 146)	PW 110 & PW 146	NONE

14	Farhana, Daughter of PW 106	PW 106,158	Bhavani, A-25, A-26 and A-28
15	Ghosiyabanu, Sister-in-law of PW 106	PW 106	Bhavani, A-25, A-26 and A-28
16	Akram, Nephew of PW 106	PW 106	Bhavani, A-25, A-26 and A-28
17	Rukhsana, daughter of PW 114	PW 114	Guddu, Bhavani, A-22.
18	Zarina, daughter of PW 114	PW 114	Guddu, Bhavani, A-22.
19	Shamsad, son of PW 114 and brother of PW 160	PW 114,160	Guddu, Bhavani, A-22.
20	One Muslim Pregnant Woman	PW 142, Sting Op.,	A-18
21	Kausharbanu (Pregnant woman)	PW 158	A-30
22	Abedabibi (Mother of PW 158)	PW 158	A-30
23	Gulnaz (Niece of PW 158 i.e. daughter of one Saidabanu)	PW 158	A-30
24	Mother of the said Kausharbanu	PW 158	A-30
25	Maternal aunt of the said Kausharbanu	PW 158	A-30
26	Wasim, son of Abdul Aziz	PW 158,247	A-30
27	Salim, son of Abdul Aziz	PW 158,247	A-30
28	Shakeel Abdul Alim Chaudhary	PW 174	A-18, 22, 41, Dalpat, Bhavani and Guddu.
29	Zarina Bundubhai Qureshi	PW 209,212	A-1, A-10, A-22, A-28, A-40, A-53, A-60, Bhavani, Dalpat and Guddu.
30	Nasim Bundubhai Qureshi	PW 209	A-1, A-10, A-22, A-28, A-40, A-53, A-60, Bhavani, Dalpat and Guddu.
31	Mohammad Aiyub Shaikh (husband of PW 231)	PW 226,231	**NONE**
32	Mohammed Yunus Mohammed Razzak Ansari (son of PW 247)	PW 247	Bhavani, Suresh

33	Maiyuddin (son of PW 261)	PW 261	A-2, 22, 26 & Guddu

[B] COMMON FOR ALL PWs. :

This Court is of the firm opinion, since from the observations and demeanour of the above referred PWs, the judicial mind is satisfied that, all the above referred PWs have been found to be very natural, credible who have no reason to falsely involve the accused. They were either injured or relative of the deceased injured or relative of the another injured victims and that their over all impression created in the mind of the Court is satisfying and that that is the principal reason in addition to the substantial and circumstantial evidence that they are held to be dependable, reliable and truthful. After passage of eight years, the inclination of false involvement can hardly be believed which was not found in the case.

Some of the PWs. were slightly exaggerative but, proper scrutiny can remedied it.

[C] FINAL CONCLUSION OF THE MATERIAL SO FAR AND FOR THE PW WHO ONLY INVOLVED THE DEAD ACCUSED (THIS CHAPTER IS IN PART-6):

Following facts stand clearly proved to have been established beyond all reasonable doubt that :

1. The 26 conspirators and the deceased accused, etc. viz. A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52,

A-55, A-58 and A-62 (26 live accused) were the members of unlawful assembly of the morning occurrence who are punishable for the morning occurrence.

2. The deceased accused and 14 live accused viz. A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44 and A-46, were the members of the unlawful assembly which has committed the offences in the noon occurrence. Except A-4, A-28 and A-30, others members of the unlawful assembly for the noon occurrence were the conspirators as well. Among the 14 live accused, the 11 conspirators have continued in the unlawful assembly whereas, remaining conspirators have discontinued. These 14 accused are punishable for the offences committed in the noon occurrence as the members of the unlawful assembly.

3. The deceased accused and 18 live accused viz.A-1, A-2, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-28, A-30, A-40, A-41, A-44, A-52, A-53, A-55 and A-60 were the members of the unlawful assembly which committed the offences in the evening occurrence.

Among the 18, except A-28, A-30, A-53 and A-60, all the others were conspirators who were present in the unlawful assembly in the evening occurrence.

4. It needs a very special note that atleast A-1, A-2, A-10, A-22, A-25, A-26, A-41 and A-44 are all the accused who were constantly present in all the three occurrences and that, the witnesses have proved their presence and have implicated them in all the three occurrences. Meaning thereby, right from

9:30 a.m. until the end of the day, these accused have continued with the unlawful assembly formed by them in the morning. Thus, these are the accused who are common accused for any of the occurrence at the site of the offence on the date of the offence. The presence of A-21 has also been inferred basing upon his own extrajudicial confession but, in any case, he has also proved to be conspirator.

5. There is no evidence that A-37 ever became a member of the unlawful assembly but then, her role as the kingpin of the conspiracy and one among the main leaders of the entire conspiracy and her proven abetment to the offences committed by the co-conspirators and members of the unlawful assembly, her active and effective instigation and her acting in pursuance of the conspiracy, have all made her liable to be punished for the abetment which is at par with the principle offenders for all the offences committed throughout the day, in all the three occurrences by the unlawful assembly.

6. A-21 is also a conspirator as well as member of the unlawful assembly. Thus, he is liable to be punished for both.

7. What has been discussed in Chapter-1 in this part at paragraph 3(a) to 3(n) have all been proved beyond all reasonable doubt upon appreciation of the oral and documentary evidence on the record of the case.

8. While reading the evidence of the prosecution witnesses as a whole, there appears the ring of truth in their evidence, they were found less formal and more casual.

9. It is found very much acceptable that the PWs were so terrified by burning the Muslim chawls and by seeing the Muslims being burnt alive that they had to leave their houses and some of them left it unchained.

Since the PW were not left with any option but, to come out of their houses on account of burning of Muslim chawls by the accused, the probability of their seeing the occurrences is found too brilliant.

This also proves their natural presence at the site of the offence.

10. The oral testimony of the witnesses when read with the circumstantial evidence on record, it becomes clear that their version was proving the prosecution case firmly and that the contradiction highlighted was neither material nor substantial.

11. Burning the Muslims alive has been proved to have been begun right from about 10:00 a.m. on wards as the medical case papers like that of Shakina and Razzak show the history given by them in the hospital. Like both of them, many were burnt in the enclosed dwelling houses while the houses were burnt by the accused, this also gets proved from the presence of carbon from their trachea.

12. In the light of the evidence and in background of the well settled proposition of law and in view of the probabilities, since no serious omissions and infirmities are found in the evidence adduced on the record, it stands proved that the prosecution is successful in bringing home the guilt of the accused who have

been named herein above in this final conclusion.

13. The oral evidence brought on record is found cogent, believable and satisfactory and that it gets strong support from the circumstantial evidence and some of the documentary evidence on record. It hardly needs to be clarified that neither the hypothesis nor the suspicion has played any role in coming to a conclusion.

14. It is observed by this Court that the conduct of the eye-witnesses was very natural when they say that they were extremely terrorized. It is a matter of common experience that whenever any person witnessed the ghastly occurrence, one would be terrorized.

15. The explanation offered by the witnesses for the nondisclosure of the names of the accused in the year, 2002 itself is very much believable which has been read alongwith the proved fact that the previous investigation for the reasons recorded at Part-2 of the judgment is found to be unreliable as far as recording of the statements of the witnesses is concerned.

16. The depositions of the witnesses have been noticed to be honest and true and that there is nothing to doubt as far as the reliable PWs are concerned.

17. The silence of the witnesses much alleged by the defence has not remained unexplained. The plea of the witnesses of having been extremely frightened of the accused has impressed the judicial soul and that the same has been found

to be acceptable one.

18. The admission of the prosecution witnesses which materially detracted from their credibility have been noticed by this Court and that the appreciation of evidence has been done accordingly.

19. The delay in recording of the statement by the previous investigators has not effected their testimony and that the testimonies have been found to be quite reliable.

20. The presence of PW have clearly been established at the scene of the offence, it cannot be doubted on supposed natural conduct of a person during or after the occurrence. It is difficult always to imagine how the prosecution witnesses would act or react to any occurrence as there are number of imponderable aspects involved in the conduct.

The appreciation of the oral evidence of the witnesses has to be considered on the broad spectrum of the prosecution version.

21. The discrepancies created during the cross could be because the questions asked to the PWs were unexpected questions and that due to lapse of memory, due to streo-type investigation, due to normal errors of observation and perception, the witnesses may not be able to meet with the cross examination since, even the trial has also taken about 10 years. Moreover, the cross examination is a dual between an expert person with high legal acumen and a person who is rustic having no deep sense of time or ability to express and

explain certain intricacies and details of any occurrence. This Court has thought it prudent to ignore all such so called discrepancies which as a matter of fact show that the witness was quite natural.

22. The testimonies of the injured prosecution witnesses cannot be disbelieved in light of the settled principles of law which is also apparently found to be most believable which is corroborated by the oral evidence of the treating doctors and supported by the injury certificates on the record of the case.

23. When the entire Muslim chalws were burnt, the only intention which could be attributed to the accused is that the accused have designed to cause death of all the inmates in the dwelling houses and in the Muslim chawls, the intention obviously could also be to damage, destroy and demolish the properties of the Muslim inmates which they had in their dwelling houses.

24. While appreciating the oral evidence doing the interpretation submitted to be done by the defence, would amount to abandoning good sense and to take shallow view of the evidence on the record of the case.

25. This Court is aware that the suggestions put in cross examination are no evidence. The defence is not expected to put forward the entire defence while cross examining one of the PW. The suggestion given by the learned advocate for the accused do not bind the accused. Considering the same, wherever the reference of cross examination has been made, it is not to fill in the gap in the evidence of the prosecution case,

but, it is merely to bring on record even the view point of the defence and at least what even the defence has accepted like at Part-3 the oral evidence of PW-104 has been discussed at length where the suggestions about the presence of A-37 at the site of the offence were given by the learned advocate for the defence. It is clarified here that in coming to the conclusion of the guilt of any of the accused, the suggestions given by the defence were kept out of consideration.

26. In injuries proved to have been sustained by about atleast 125 PWs are apparently neither self inflicted injuries nor accidental injuries. In the same way, the death of 96 Muslims were neither accidental nor natural. The deaths are homicidal deaths where, the intention to kill was apparent on the part of the accused assaulter. It is found that the injured witnesses are corroborated by the medical evidence and injury certificates brought on record which all proves the injuries to have been occurred on the date of the offence and at the site of the offence while, the witnesses were present at the site. The history given at the hospital also helps proving the prosecution case of the injuries to have been sustained and the attempt to murder have been committed on the injured at the site of the offence, on the date of the offence and by the accused and none else. The evidence of postmortem doctors show that the injuries sustained by the deceased including the burn injuries were ante mortem in nature which were fresh and in any case not of the time which can go beyond 10:00 a.m. of 28/02/2002. Their admission in the hospital on 28/02/2002 is itself a speaking circumstance. In light of what is discussed above, it is most improper to doubt the testimonies of all such injured witnesses and the eyewitensses who have witnessed deaths of

their near and dear family members. In light of what has been discussed herein above, the minor discrepancies found were all ignored in the larger interest of justice as, the discrepancies were not at all noticed to be material.

All the 125 injured or in case of minors, their parents while speaking for the injuries of their children, were found very natural, their presence has been established by the fact that they have received the injuries on different limbs of their bodies and that this becomes a key circumstance for which reason also, the evidence of such victim witnesses cannot be discarded on flimsy grounds as submitted by the defence.

27. In the opinion of this Court, the criminological chain of why, where, when, by whom, etc. gets proved very well and that the over all material guides the Court that only one inescapable conclusion which can be drawn in that the accused are linked with the crime and that the conclusion that can only follow is the accused are guilty.

28. For the sake of ready reference and to put the final conclusion in a very brief form, it is though fitting to enlist herein below, the deaths proved through different PWs as were caused on the date, time and site of the occurrence. At Part-4 the names of about 28 deceased persons have been enlisted as a proved fact which prove the death of those 28 persons to have been occurred on the date, time and place of the riot. Moreover, the prosecution has proved more 11 deaths by producing on record 11 burial receipts which further prove 11 more deaths in the occurrences. That being so, uptil Part-4 from what has been discussed about 39 deaths, already stands

proved. Through the oral evidence of the occurrence witnesses, the relatives of deceased victims and the eye-witnesses, the other deaths proved on the record as were committed on that day, have been placed herein below as ready reference, which, in nutshell, prove the death of 96 deceased to have been occurred on the date of the occurrence. It is needed to specify and clarify that many of the deceased were also referred by two witnesses but, viewing the overall material brought on record, it appears that the prosecution has successfully proved the deaths of 96 deceased victims in the three different occurrences on the date of the communal riot.

29. Following points need consideration :

(a) It is case of none that there was any other assaulting and attacking mob of any other community then of Hindus.

(b) A feeble attempt has been made to establish that there was mob of Muslims in the morning and that the said mob was doing stone pelting.

The prosecution witnesses have clarified that this stone pelting was with reference to the attack on Nurani Masjid.

As has emerged from the oral evidence of Mr. Gondiya and more particularly, his affidavit filed before Hon'ble Nanavati and Shah Commission, that the population of Muslims was about 4.44% in the Patiya area hence, it cannot be expected that the mob of the Muslims could be there when the witnesses testify that the mob was in thousands. it is therefore, not possible that there would be mob of Muslims.

(c) It is a matter of fact that 96 Muslims were done to death and about more than, 125 Muslims were injured which injuries range from simple hurt to attempt to commit murder. When the Muslims were killed and injured it cannot be believed that in the background of the call given by the Vishwa Hindu Parishad, the Muslims might have killed these many Muslims. Hence, the only one logical conclusion is that, the tormentor, aggressors were Hindus only.

(d) It is proved fact that conspiracy was hatched among 27 live conspirators in the company of deceased conspirators, absconding conspirators, etc.

(e) It is also a proved fact that unlawful assembly was formed which has committed numerous offences in the three different occurrences.

(f) Almost all accused whosoever have been held guilty, viz. the 32 accused have been identified by one or another prosecution witness. It is therefore, proved that these 32 accused were punishable for having committed different offences.

(g) The accused were very much excited and provoked who all were giving very provoking and exciting slogans. Certain conspirator accused have proved to have abetted the commission of the offence, have abetted the formation of the unlawful assembly and have instigated the co-conspirators of the crime.

(h) It is proved fact that the accused were noticed with deadly weapons in their hands.

(i) It is a proved fact that the accused had motive and they were out to take revenge of Godhra carnage viz. deaths by burning alive the Karsevaks.

(j) When it is a proved fact that the accused were out with one or the other weapon, it can safely be inferred that except the accused has an intention to do away the Muslims, they would not have come out of their houses with weapons because, that is not a usual behaviour. The usual human conduct in a civilized society is otherwise.

(k) When the excited members of the assembly were acting on the call of the V.H.P. and when the motive is clear and when they all were sharing common objects of committing different offences, it is but natural that, such an excited assembly would do the offences against the Muslims. This is clear when the site of the offence has been selected that of Muslim chawls and religious place of Muslims.

(l) The accused have been clearly identified by different prosecution witnesses for many offences against human body including burning the deceased victims alive, commission of murders, attempt to murder, etc.

(m) The attack and assault by the members of unlawful assembly, preparation of crime, preconsort and premeditation arrived among the accused, agreement to have been attained among the accused are all the fact which have been clearly

proved beyond all reasonable doubts.

In light of the above proved facts this Court is of the firm opinion that in light of the proved facts the Court can safely presume that it is very likely that all the offences committed in the morning were committed by the members of unlawful assembly viz. the 26 conspirators who then formed an unlawful assembly.

In view of the course of human conduct it is very much possible that all the offences committed in different occurrences were committed by the members of the unlawful assembly who were present and found participating in different occurrences at different times. This is likely for the reason that it is very natural and common for the excited members of unlawful assembly to do away the Muslims while sharing the common objects. In the same way, the human conduct can safely be presumed to be such that once it becomes an unlawful assembly, the behaviour of individual also becomes behaviour according to the mood and spirit of the mob. It is a proved fact that the spirit, excitement and provocation of the mob was on its peak for the entire day and that in light of the said proved fact it can safely be presumed that all the offences committed in every occurrence were committed by the members of unlawful assembly as has been held in the beginning of this topic of final conclusion.

This Court is of the humble but firm opinion that the Court has sufficient material and sufficient proved facts and in light of the facts of this particular case, it is extremely safe, lawful, in tune with the normal human conduct, in tune with

the course of natural event and within the scope of likelihood of commission of all the offences narrated under the heading of morning occurrence, noon occurrence and evening occurrence that all the offences to have been committed by the members of the unlawful assembly whose members were present and have participated in the occurrence which is a proved fact.

(n) The improper conduct of the previous investigators should not stand in the way of evaluating the evidence by the Courts otherwise the designed mischief would be perpetuated and injustice would be caused to the complainant and victim parties which is not in the larger interest of justice.

(o) The deaths of 96 Muslims and injuries to about 125 victims was the direct and proximate cause of the acts of the accused which stands proved beyond all reasonable doubts.

[D] FINAL CONCLUSION OF PART - 3 & 5, ETC. AS FAR AS DEATHS PROVED :

Following persons have been proved to have been died in the occurrence in homicidal death which stand proved through different PWs beyond reasonable doubt.

Sr. No.	Name of the deceased	Proved by which PW
1	Sharif Iqbal (son of PW 203 and maternal brother of PW 37)	PW 37, 203, 162
2	Siddique	PW 37, 162
3	Kudratbibi (Mother of PW 72)	PW 72, 158
4	Mehboob (Brother of PW 72)	PW 72
5	Shabbir (brother of PW 72)	PW 72, 158

6	Jubaidabibi (sister-in-law of PW 72)	PW 72
7	Shabnam (niece of PW 72)	PW 72, 229
8	Shamina (niece of PW 72)	PW 72
9	Asif (nephew of PW 72)	PW 72
10	Nadim (nephew of PW 72)	PW 72
11	Abdul Wahab (Father of PW 65)	PW 65
12	Hanifa Khatun (Mother of PW 65)	PW 65
13	Ismailbhai Mansuri (father of PW 110 & 146)	PW 110 & PW 146
14	Farhana, Daughter of PW 106	PW 106,158
15	Ghosiyabanu, Sister-in-law of PW 106	PW 106
16	Akram, Nephew of PW 106	PW 106
17	Rukhsana, daughter of PW 114	PW 114
18	Zarina, daughter of PW 114	PW 114
19	Shamsad, son of PW 114 and brother of PW 160	PW 114,160
20	Kausharbanu (Pregnant woman)	PW 158
21	Abedabibi (Mother of PW 158)	PW 158
22	Gulnaz (Niece of PW 158 i.e. daughter of one Saidabanu)	PW 158
23	Mother of the said Kausharbanu	PW 158
24	Maternal aunt of the said Kausharbanu	PW 158
25	Wasim, son of Abdul Aziz	PW 158,247
26	Salim, son of Abdul Aziz	PW 158,247
28	Shakeel Abdul Alim Chaudhary	PW 174
29	Zarina Bundubhai Qureshi	PW 209,212

30	Nasim Bundubhai Qureshi	PW 209
31	Mohammad Aiyub Shaikh (husband of PW 231)	PW 226,231
32	Mohammad Yunus Mohammed Razzak Ansari (son of PW 247)	PW 247
33	Maiyuddin (son of PW 261)	PW 261
34	Salimabanu Kasamali Saiyad (wife of PW 74) (who was lame and one eyed)	PW 74
35	Sarmuddin Shaikh (father of PW 78)	PW 78
36	Sufiya Begam Abdul Rahim Luhari (wife of PW 92)	PW 92
37	Reshmabanu (daughter of PW 93)	PW 93
38	Mohsin Mebha Hussain Munir Ahmed Shaikh (son of PW 111)	PW 111
39	Noorjahan Mohammad Hussain (niece of the PW 111)	PW 111
40	Fatima, mother-in-law of PW 151	PW 151
41	Firoz, Son of PW 151	PW 151
42	Nilofar, daughter of PW 153	PW 153
43	Shabnambanu, wife of PW 240	PW 240
44	Abdul Kadir Shaikh	PW 246
45	Salman Inayat Saiyad (Son of PW 251)	PW 251
46	Irfan Inayat Saiyad (Son of PW 251)	PW 251
47	Saliabibi (daughter of PW 201)	PW 201
48	Salima (sister of PW 229)	
49	Lalbi (wife	PW 156
50	Shahin (daughter)	PW 156
51	Afrin (daughter)	PW 156
52	Sufiya (daughter)	PW 156
53	Mohammad (son)	PW 156
54	Khwaja Hussain (son)	PW 156
55	Mehboob (son)	PW 156
56	Son of Mehboob (grand son)	PW 156
57	Son of Mehboob (grand son)	PW 156
58	Mumtaz (mother)	PW 198
59	Gosiya (wife)	PW 198
60	Akram (son)	PW 198

61	Son of Mullaji	PW 149, 181
62	Aiyub	PW 149, 140, 143, 156, 224
63	Hasanali Mohbeali Mirza	PW 135
64	Crippled Moiyuddin	PW 261, 167,177, 234, 229
65	Mohammad Aiyub Allabaksh Shaikh	PW 226
66	Abid	PW 149
67	Hasan Qureshi	PW 149
68	Tarkishbibi (mother)	PW 259
69	Mohammad Shafiq Adam Shaikh	PW 104

X * X * X * X * X * X * X

~:: PART - 6 ::~

CHAPTER-I: THE PWs WHO INVOLVE THE DEAD ACCUSED

1. PW-52, 54, 70, 72, 73, 75, 76, 79, 81, 82, 83, 90, 94, 105, 106, 107, 109, 112, 113, 114, 115, 117, 136, 137, 138, 140, 141, 142, 144, 147, 148, 149, 150, 156, 157, 162, 165, 166, 168, 169, 170, 171, 172, 174, 175, 181, 182, 183, 185, 187, 188, 189, 190, 191, 192, 193, 197, 198, 199, 201, 202, 203, 209, 212, 213, 217, 219, 224, 226, 227, 228, 230, 231, 234, 235, 242, 243, 247, 248, 250, 257, 260, 261 and 326 are all about 84 different victims or relatives of the deceased victims who have involved different accused including the dead accused in their versions before the Court.

2. Out of these 84 witnesses, about 14 PWs are such who have exclusively involved the dead accused in the charged offences. They are viz. PW- 54, 70, 75, 76, 79, 81, 82, 90, 140, 148, 166, 191, 248 and 326.

3. Out of these 84 PWs about 72 PWs involve deceased Guddu, about 60 PWs involve Jay Bhavani alias Bhavani alias Ratilal Somabhai, about 9 PW are involving Dalpat and 1 PW is involving Laliyo known as Jashwant alias Lalo Keshavlal Rathod (Chhara), Ramesh alias Subhash Ramkrishna, Raju Ratilal Chhara.

4. Keeping in mind the role of the deceased accused the sum and substance of the examination-in-chief of different PW focuses on the following points :

(a) Bhavani and Guddu were personally known to many of the PW.

(b) Guddu was residing in the Muslim Chawls itself whereas Bhavani and Dalpat were residing in the adjoining society.

(c) Guddu, Bhavani and Dalpat had died but the PWs have stated that had they been alive the witnesses would have identified them in the Court.

(d) The witnesses reveal the similar role having been played by the deceased accused in the crime as was played by the live accused who are under trial.

(e) The presence and participation of Guddu, Bhavani and

Dalpat have been proved on record by more than one PW. These accused were noticed by PWs at the time of the offence and at the site of the offence.

(f) Guddu and Bhavani were very active leaders of the riot, which took place on that day.

(g) The witnesses involve Guddu, Dalpat and Bhavani in murder of Aiyub, rape of women victims and then burning those women, robing and ransacking the properties of the Muslims. They were also seen by almost all witnesses along with weapons like sword, container of kerosene, pipe, stick etc., Bhavani has been referred to by many witnesses who was pointing to the hiding points of Muslims or the places where Muslims had taken refuge on that day to the Hindu mobs.

(h) During the testimonies the witnesses have also stated that by sprinkling petrol the accused have torched shops, carts, wooden cabins, houses of Muslim, instead of water and for the demand of water a glass of petrol was given, Hindus were being provoked. The sanction to prosecute these accused has been granted. In those sanction orders the names of the deceased accused have also been included. This is from the deposition of the sanctioning authorities like PW- 303 for Dalpat and Bhavani and PW- 304 for Guddu. The sanction orders are respectively at Exh.2107 & 2112.

(i) Almost all the prosecution witnesses have told that the date of incident was 28/02/2002. On that day there was call of Bandh, the mobs came from Natraj, came from Krishna Nagar, the men of the mobs had deadly weapons like sword, stick,

scythe, pipe etc., the mobs had kerosene and petrol with them, the mobs wore Khakhi half and saffron head belt, the incident started at about 9.30 am, it also took place in the evening, for the entire day different occurrences were ongoing, the men of the mobs were slaughtering, beating, killing people, they were burning houses, shops, cart etc., they were giving cries of “kill, burn, do not let alive any Muslim, Jay Shri Ram etc.”, the gas cylinders were burst, tear gas shells were quelled, there were too much damages to every house of Muslims, panchnamas were drawn for the damages, Muslims were not permitted to go inside SRP Quarters, they have hidden themselves on the terrace of the Gangotri and that police did firing.

(j) Almost every PW was cross examined extensively but there is nothing which is coming out in the lengthy cross examination to doubt the prosecution version put through by these witnesses as far as the dead accused are concerned.

It also needs a special note that no substantial challenge has been made about the presence and participation of these deceased accused.

This Court therefore, believes that when the substantial challenge has not been offered to the role described by different witnesses qua the deceased accused, qua their presence and participation in the riot, the presence, participation and role described by the same witnesses qua the accused against whom trial is ongoing should not be principally doubted. However, since that would be dealt at an appropriate part in this judgment it is not discussed here.

(k) Vide Exh.1776/1 to 1776/24 the record of C-Summary has been brought from the Court of learned Metropolitan Magistrate. If the said record is seen, then in all the complaints, statements and printed applications given by different witnesses, there are serious allegations against the deceased accused and more particularly against Guddu, Bhavani and Dalpat. Even there is also statements by which the witnesses have involved the other deceased accused in the crime.

(l) As far as Guddu and Bhavani are concerned, there is very clear cut contention in the complaint application about their role in preparation, pre-concert for the crime in question. Even these documents are also supporting the prosecution case about presence and participation of the deceased accused.

(m) The kerosene container has been discovered from deceased Bhavani whereas from deceased Guddu, scythe has been discovered for which panchnama Exh.2129 and 2130 respectively are on record whereby the case of the prosecution gets support.

Hence, it is clear that both the deceased were rightly involved by the witnesses who were present and participating in the riots along with deadly weapons.

5. Vide Exh.2129, a discovery panchnama for deceased accused Ratilal alias Jay Bhavani is on record. After the preliminary panchnama the accused took the panchas and the Investigating Officer at his residence which is in the Gangotri society in the locality where the crime was committed and from

his own house he discovered a container of kerosene of five liters which has been seized by the investigating agency.

6. Vide Exh.2130, the discovery panchnama for deceased accused Mukesh alias Guddu has also been drawn. This Mukesh alias Guddu took panchas and the Investigating Officer at his residence which was in the Muslim Chawls itself at Jawan Nagar. From there he took out scythe from his residence.

7. Both the deceased accused have stated that the discovered muddamal were utilized by them in the commission of crime. These credible admissible and valid discovery panchnamas are also supporting the prosecution case as far as presence and participation of both the deceased accused are concerned.

8. In view of the above discussed facts, it becomes amply clear that the accused and more particularly the deceased accused Bhavani, Guddu, Dalpat, Jaswant alias Laliyo, (PW- 235), Ramesh alias Subhash (PW- 149) and others were involved in the charged offences.

Since this Court has practiced the theory of need of at least one witness who would reliably involve the accused through the testimony, it seems just and proper to hold that Guddu, Dalpat, Jaswant, Ramesh and Bhavani are involved in the charged offences and that they were also the conspirators who then executed the conspiracy. While executing the conspiracy the deceased accused had obviously joined the unlawful assembly at the site of the offence where also they

have committed the offence.

FINDINGS FOR THE DEAD ACCUSED :

(a) These prosecution witnesses prove the date, time and place of occurrence.

(b) The PWs involved deceased Guddu, Bhavani, Jaswant (PW- 235), Ramesh (PW- 149) and Dalpat in the crime committed in the trial - The presence and participation of the five accused is proved beyond reasonable doubt.

(c) Many accused were seen by the PWs with weapons like sword, container of kerosene, pipes, sticks, etc.

(d) The discovery panchnamas prove the possession of the weapons and the use of the weapons by deceased Jay Bhavani and deceased Guddu who both have discovered the respective weapons as stand revealed in the discovery panchnama. (Exhs. 2129 and 2130).

(e) Deceased Guddu and Bhavani are held to be conspirators as held under the Chapter of Conspiracy. They are also liable to have executed the conspiracy in the company of the live accused and the named dead accused who have executed the conspiracy and did riotous activities on the date of the offence.

(f) Deceased accused Dalpat, Jaswant alias Laliyo and Ramesh alias Subhash are also held liable to have become members of unlawful assembly at the site, which is held to have proved beyond all reasonable doubt.

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CHAPTER-II: IMPORTANT ASPECTS FROM THE DEPOSITIONS

(1) **PW-70** proves injury in firing to Khalid, Peeru and Mohammad.

(2) **PW- 76** deposes that his eldest son, Ahmed Raza was seriously injured and was treated at V.S.Hospital for five months. His wife Noorjahan, mother-in-law, Mahabubi, nephew Mohsin and niece Afrin were the four who were cut and then burnt by the mob in the occurrence.

The witness has sustained tremendous damages at his house which was ruined, his brother Shabbir was burnt in the occurrence and was admitted at Civil Hospital. (para-8, 9)

(3) **PW- 79** at para-4, 6 refers the fact that his wife was injured in the occurrence who was admitted at V.S.Hospital, his daughter Nilofar was killed and then burnt in the evening occurrence.

The house of the witness was looted and he suffered damages of substantial amount.

(4) **PW- 90** at para-8 to 10 spells about her own son, younger brother-in-law, his children etc. to have been done away in the evening occurrence. This witness also deposes on lot of damages to have been suffered by her at her house, the

kerosene to have been taken by the mob from rationing shop and burning rag and swords to have been used in the occurrence.

(5) **PW- 140** at para-9 onwards deposes that Aiyub jumped from the terrace and then after Guddu gave him blow of scythe who was then burnt in the rickshaw of the witness in the evening.

Son Safar and daughter Kashmira were injured in the noon occurrence who were treated at Camp.

He has also suffered loss at his house.

(6) **PW- 148** has also suffered damages at his house and his daughter Nasrin was injured in the occurrence who was treated at Camp.

(7) **PW- 166** at para-7, 8 clarifies that the witness is an eyewitness of the morning occurrence of attack on Nurani and that her husband, Mohammad Hasan Qureshi was injured and burnt alive, his house, shop were all robbed and looted.

(8) PW-167 testifies Aabid to had died because of police firing.

(9) **PW- 191** spells on the rape and murder of a girl who has been done away by Bhavani. It is clear through this witness and many other witnesses that about 58 persons died at the water tank on the date of the occurrence, and 26 victims there were sent to Civil Hospital for the treatment.

Wife Bilkishbanu, daughter Kherunisha, son Hamidraza were all injured in the occurrence.

Out of the admitted patients at Civil Hospital, 9 persons succumbed to death during their treatment.

(10) **PW- 248** himself was injured, his wife was injured who was treated at camp, this witness has also sustained losses and damages in his house. He has seen Aabid being killed in private firing in the morning.

(11) **PW- 326** at para-4 states that nephew Shahrukh was thrown in the fire, husband Abdulla Shaikh was cut by sword blows and thus, both of them were killed in the occurrence. Her nephew Ahmed Mehboob was injured in police firing in the morning occurrence. The entire household was ransacked and were broken into pieces. Son Ahmed was injured in the occurrence.

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CHAPTER-III: POLICE WITNESSES

INTRODUCTION :

1. Except PW- 327, almost all the police witnesses are either the previous investigating officers or are the officials who were forming the team of previous investigators either as assignee officers or as police officials.

2. This Court has not held the previous investigation to be such on which implicit reliance can be placed, more particularly for not recording true statements of the victims. At times, the attempts have been confirmed to have been made to see to it that presence and participation of certain VIP accused does not come on record. Not only that, but attempts have also been made to project entire communal riots to have been created because of the occurrence of rash and negligent driving of TATA 407, free fight took place at the site between Hindus and Muslims and murder of Ranjit Singh etc.

3. ON INCIDENT OF TATA 407 :

As far as the occurrence of TATA 407 is concerned, it does not seems to be probable that the communal riots at Naroda Patia was generated on account of this incident. In fact, the riot has started somewhere after 9.30 or 10.00 a.m. of 28/02/2002, whereas, as has already been discussed, the occurrence of TATA 407 took place after about 11.30 a.m. or so (para 11 of the deposition of PW- 274 who chased the TATA 407). This point has been discussed elaborately at another part of the judgment. Suffice it to say here that through many of the police personnel it has been been projected in their testimony that the mob was provoked because of this occurrence, but at the same time, certain police PW have also told that it is not true, adding that, that this may be one of the cause for addition of the provocation in the mob. But, even this is not probable as before 11.30 a.m. many occurrences like attack on Nurani Masjid, provoking lecture of A-37, assembly of violent Hindu mobs, torching Muslim shops, houses, carts and cabins near

Nurani Masjid were all in fact not only initiated but were going on, on its peak.

In fact, it is more probable that because the mob of the miscreants has created such a terrorising situation wherein PW- 200 and other Muslims thought of running away from the site to save their lives and it is for that reason they ran away in TATA 407. If what is attempted to be projected was truth then the case against PW- 200 could not have been filed only for rash and negligent driving, it should have been for rioting or conspiring or aiding rioting etc. but Exh.1426 shows that the complaint against PW- 200 u/s.279, 337 IPC etc.

This Court firmly believes that as has already been held previous investigation is not reliable. This Court believes that this part of the depositions about the cause of the riot to be occurrence of TATA 407 of the police witnesses is not probable, not acceptable and cannot be truth. No weightage can be given to the omissions and contradictions shown from the statement before previous investigators in light of the fact that the previous investigation is held to be not reliable on many counts and mainly for recording true statement of the victim witnesses.

4. ON FREE FIGHT :

(a) The another point is related to the submission of L.A. for the defence on fight between Hindus and Muslims on that day which is submitted by defence as free fight. If the testimony of the police officials, who were present at the site, who were on duty at that time, whose presence was natural

there and who were in fact eyewitnesses at the site near ST Workshop and or near Nurani Masjid, are perused then it is clear that what police officials are describing is not free fight but is an attempt by the Muslims to defend and to resist the attack on them. It is stated by the police officials that while the Hindu mobs were unduly entering the Muslim chawls, than the Muslims have resisted their entering into the Muslim chawls.

In the opinion of this Court when it was a day of call of the bandh by Vishwa Hindu Parishad, when Hindus were armed with deadly weapons, were thousand in number and when there was background of the occurrence of Godhra carnage, it is very natural for the Muslim inhabitants of the Muslim chawls to defend and to resist the attack with all strength at their command.

In view of the foregoing discussion this cannot be termed to be free fight and when the population of Muslims is only about 4.44% (from the affidavit of Mr.Gondia, police officer before Hon'ble Nanavaty and Shah Commission), it is not probable that 4.44% would be able to do free fight with say 90%. The principle of probability does not go with free fight and reason of provocation opined by some of the police officials. Moreover, in free fight victims and injured would normally be from both the side and here 125 victims are injured of the Muslim community alone. This Court therefore is to keep the above submission of free fight out of consideration.

(b) The murder of Ranjit Singh has also not been proved beyond reasonable doubt to have been committed by any Muslim, in the judgement pronounced by the court of brother

judge, hence this also does not stand proved except the submission of L.A. for defence no evidence is on record to believe this. Thirdly crime is no justification for commission of another crime.

5. The common facts deposed by many of the police officials are :

The date of the occurrence was 28/2/02, the call of bandh was given by VHP, the time of assembling of the mobs was around from 9.00 a.m. onwards, the attack on Nurani Masjid by torching was done, torching shops, carts, cabins was done, presence of thousand of Hindus was at the site, need of police firing, lathicharge, guelling teargas shells took place, presence of the police officers Shri Rana, Shri Gondia, Shri Mysorewala, the complainant, other police officials was there at the site, the Muslims were in minority and as against that several times more Hindus were present, the fact that none of the miscreants of the mob was arrested from the site, the death toll of Muslims in the occurrence of the water tank was quite high, they were taken to the hospitals for treatment by police etc.

For the sake of brevity, all these parts of the testimony shall not be repeated while appreciating the testimonies of different police officials as these are common part of version. The different factors from their testimony only shall be considered now.

6. When the police has made conscious efforts to see to it that certain persons do not come on book as culprits and that

only those who had to be taken on book were taken with such contention in the statement of the witness where their identity remains doubtful. This was done by anyhow writing in almost every statement that the witness 'does not know anyone from the mob or present in the mob on that day'. This is almost common recital in all the statements before police. The Court is convinced about the unfairness in recording the statement. It is therefore, held that the record of statement is not faithful record.

7. It is observed that the names of Muslim chawls, the surnames of Muslims and other incriminating material facts have not been properly written hence, in that case, normally it cannot be believed that the police would falsely involve any of the Hindu accused except when a specific cause of false involvement is brought on record by the defence. However, since larger interest of justice demands it has been practiced that no accused shall be held guilty if he is involved in the crime by police PW only as it is not found safe as the then first I.O. and his team of the Naroda Police Station has not inspired confidence and the judicial soul is convinced that it is safe to act upon the version of police PW lone. It is different that if the guilt of the accused stands proved by reliable victim PW then, corroboration can be looked into from the testimony of reliable police PW to corroborate only. The accused who were not residing in the Muslim chawls or near Muslim chawls or in the locality may not be known to the Muslim victims but when they are leaders of political parties and when they are leading personalities of the area the police can always identify them correctly.

It is clarified that this Court shall scrutinize the oral evidence of the police officials who were part of investigation with due care, but the police officials who were then on duty, eyewitnesses , police and obviously were since not the party to the riot, their evidence if passes test of credibility can indeed be conisdered by the Court for administration of justice.

The other police witnesses are the officials who have brought curfew order, notification, hospital vardis on record. They all are formal official PW and not eyewitnesses.

Some of the policemen were given point duty for bandobasth on that day. The PW who belong to police department and are not forming part of investigating team are to be appreciated accordingly.

It needs to be borne in mind that the police PW are not rustic and or straight forward PW but they know law, intricacies of the trial and many more things. The Court shall have to be on its guard in case of the police PW and more particularly, who are the team members of the previous investigators.

8. POLICE OFFICIALS WHO BROUGHT VARDHIS OF THE HOSPITALS (PW- 221, 222 & 241) :

(I) PW- 222 (brought vardhis of Civil Hospital - Exh.1590 to Exh.1593)::

(a) The witness who was working at Civil Hospital on police table has brought vardhis to have been written by his

colleague.

During the course of the cross-examination it has been emphasised that the first death noticed on the date of the occurrence was at 12.20 p.m. the vardhi of which is at Exh. 1594. This does not tally with the oral evidence. The oral evidence as has been discussed at different parts and more particularly at Part-4 of the judgment, proves death even in the morning occurrence alongwith many attempts to murder etc. The witness brings on record Exh.1590 to Exh.1593 - the 4 vardhis for 12 deaths and 15 injuries. These vardhis proves the prosecution case of 12 deaths and 15 injuries on the date of occurrence by the victims.

FINDING :

The vardhi at Exh.1590 is of 23.40 hours, 28.2.02. This proves 12 deaths and 15 injuries on the date of occurrence.

(a) **THIS PROVES DEATH OF:**

(1) Bilkisbanu, Naroda.
(2) Jubaidabanu Shabbir Ahmed Shaikh.
(3) Kudratbibi Khurshidmiya (even repeated by vardhi Exh.1591).
(4) Hamidraza Mohammed Maru
(5) Saidabanu Ibrahimkhan Shaikh
(6) Supriya Marjid
(7) Sofiya Majidkhan Shaikh
(8) Jubaidabanu Shabbir Ahmed Shaikh
(9) Sofiyabanu Majidbhai Shaikh (Repeats)

(b) **THIS PROVES INJURIES TO HAVE BEEN SUSTAINED BY FOLLOWING VICTIMS:**

(1) Bashir Ahmed Dhobi
(2) Shabana Abdul Rahim
(3) Sufiyabanu Inayat Saiyad
(4) Jaitunbibi Aslammiya Shaikh
(5) Yasin Usmangani Mansuri
(6) Naimuddin Ibrahim Shaikh
(7) Shahjahan Shaikh
(8) Ayshabanu Mohammed Maru Pathan.
(9) Kamarraza Mohammed Maru
(10) Mohammed Maru Raufali Khan
(11) Farzanabibi Ayubkhan Pathan
(12) Reshmabanu Ayubkhan Pathan
(13) Afsanabanu Rehmanbhai Shaikh
(14) Saberabanu Abdul Sajid Shaikh
(15) Shabbir Ahmed Munir Ahmed

(c) Vardhi Exh.1591 is for the death of Kudratbibi Khurshidbhai caused on 1.3.02 due to burns injury sustained in the riots at Patia. (even repeated by vardhi Exh.1590).

(d) Exh.1592 is vardhi of death for Supriya Marjid of Naroda Patia, dated 7.3.02 due to burns at Patia by pouring petrol and kerosene.

(e) Exh.1593 is vardhi of death of Hamid Haji Mohammed Maru, Patia due to burns on 28.2.02.

Points (c) to (e) proves the deaths of the named

persons.

All the vardhis corroborate the oral evidence on the record about deaths and injuries.

(II) PW- 241 (brought vardhis from V.S. Hospital Exh.1682 to Exh.1684) :

(a) The witness and his colleague Bhikhaji were doing duty of 24 hours at V.S. Hospital. His colleague Bhikhaji had died and the witness has even proved the vardhis written by said Shri Bhikhaji.

(b) During the course of the cross-examination the vardhi Exh.1685 & 1686 have been brought on record by defence which are not concerned with this case.

(c) Exh.1685 is the vardhi for injury to Raziyabanu Mohammed Ayub Shaikh, Nurani Masjid, who was injured on her head and was burnt throwing kerosene on her body, Soeb aged 20 days was also with her. This vardhi proves the prosecution case of PW- 151, Raziyabanu and her son Soeb.

(d) Exh.1686 are the two pages of the vardhi register. The contents therein are not relevant for the case on hand as these are not vardhis of Naroda police station.

(e) There is nothing on record to disbelieve the contents produced on record from the routine official acts which the witness used to do.

FINDING :

(a) Vardhi Exh.1682 is of injury to Mohammed Khalid Saiyadali on 28/2/02 at 10.00 a.m. in firing near Nurani Masjid.

(b) Exh.1683 is vardhi of injury for Shakina Babubhai Bhatti, Razzak Babubhai, Mohammed Hussain, Zarinabanu Naimuddin, Shabinabanu, all of Patia.

(c) Exh.1684 is vardhi of injury for Mehboob Khurshid, Yasin Abdul Majid, Ahmed Badshah, Pir Mohammed Allabaksh, Madina Arif, Kulsum Ibrahimbhai, Farheenbanu Salambhai, Babul Mehboobbhai, all Patia.

The above injuries to the victims named stands proved. which all corroborate the oral evidence of victims and doctors.

(III) PW- 221 (brought vardhis of Civil Hospital - Exh.1583 to Exh.1588):

(a) The witness was on duty at the police table of Civil Hospital from 14.00 hours of 28.2.02. He performed his duty from 28.2.02 to 5.3.02. There is nothing in his cross to doubt his testimony or the documents brought on record by him since his duty was from 14.00 hours and he brought the record from that time. The typed version of the vardhis have been tagged along with the testimony. Deceased accused Nos.1 & 2 had also died whose vardhi is Exh.1583 and Exh.1585 respectively whereas, Exh.1584 is the vardhi for injury for the person who is not victim.

FINDING :

All the below are vardhis of death as stands proved.

(a) Exh.1586, Saidabanu Ibrahim Shaikh, Hussain Nagar, died on 2.3.02, was burnt by pouring petrol or kerosene.

(b) Exh.1587, Asif Shabbirbhai, aged 5 years, Hussain nagar, burnt, died on 4.3.02.

(c) Exh.1588, Sarmuddin Khalid Noormohammed, Hussain Nagar, burnt by pouring petrol or kerosene, died on 5.3.02.

These all corroborate the prosecution case.

9. THE POLICE OFFICIALS WHO BROUGHT NOTIFICATION UNDER B.P. ACT & THE CURFEW ORDER:

(I) PW- 220 (for notification under B.P. Act and Curfew)

(a) Through this witness the notification of the police commissioner in effect from 1.1.2002 to 28.2.2002, Exh.1579 and the curfew order dated 28.2.02 from 12.20 p.m. for certain areas of Ahmedabad city including Naroda at Exh.1580 are brought on record.

(b) Exh.1579 is stated to be routine and regular notification whereas, Exh.1580 is stated to be not a routine order, but is made in case of need.

(c) During the cross the witness has admitted that for both these documents he has not done the job of publishing or propagating the orders. In the opinion of this court when both the documents are issued as a result of routine official procedures, the same are presumed to have been issued properly, acted upon and complied properly. No material is brought to doubt the proprietary, about the issuance, about the publicity, about publishing or about propagating the same. Hence, it is presumed to have been properly done which has not been rebutted.

FINDING :

(a) Notification, Exh.1579 is issued under Bombay Police Act, u/s..37(1), for the period of 1.1.02 to 28.02.02, it is prohibiting carrying weapons like swords, bacons, bhala, firearms, inflammable substance etc. Actions u/s. 135(1) (imprisonment between four months to one year and fine) of B.P. Act and u/s.188 of IPC can be levied for violation of the notification.

(b) Exh.1580 is the curfew order (issued u/s.144 of Cr.P.C.) including for Naroda, effective from 12.20 p.m. of 28.2.02, the violation of which would invite consequences u/s. 188 of IPC.

(c) In this order itself, the police commissioner Shri P.C. Pandey has expressed that on account of situation of violence all around and since 'the lives and property of public seems to be in danger and that since there is apprehension of breach of

public tranquility', the order of curfew was essential.

10. THE POLICE PWs AT THE SITE ON THE DAY :

(a) Introduction :

This Court believes and has held that the previous investigation is not reliable mainly as far as recording the statements is concerned. As far as the procedures adopted as part of investigation like drawing panchnama, formalities to hold TIPs, drawing panchnama of the site of the offence, formalities of arrest, post arrest formalities, formalities for permission to draw inquest, issuing yadi for PM, collecting and keeping injury certificates on record etc. are concerned the accused were since not getting involved in the crime those formalities have been done properly by the police. In the facts and circumstances of the case, it seems just and proper to presume those of the official acts to have been performed properly except where peculiar points in form of rebuttal of that presumption can be seen on record.

(b) As far as recording the statement of the witnesses are concerned, since there comes the involvement of the accused directly, all care seems to have been taken by the police to not involve the accused, hence the oral evidences of the witnesses before the Court is given highest weightage and therefore the omissions and contradictions from the previous investigation have been kept out of consideration.

Meaning thereby the contradiction and omission shall have no weightage except are shown from the reliable

part of the statement of the SIT. This is because the previous investigation qua the statement of the witnesses has not inspired confidence of the Court. However, the procedural formalities shall have benefit of the presumption of proprietary.

(c) Presumption of proprietary is not available to the personal knowledge of the police official. When the police official is deposing in his capacity as eye-witness of the site of offence the Court has kept all necessary cautions before putting reliance on the oral evidence of such police officials. The police officials were on duty, their concentration must have been divided in being at his point and observing the accused and the occurrence as against the victim eye-witness whose complete attention and concentration was on the accused and on the occurrence and who has better opportunity of observation. The police witness being in police department, being acquainted with the court proceedings and is not new to testimony in the court, the usual hesitation, lack of confidence, lack of time sense, place sense etc. can never be there and therefore, while appreciating the evidence of the police officers the yardsticks should be different or else it may cause in justice to the defence and may be to the victim.

(d) Moreover, the police officials who are eye-witness were on that day forming part of the team of first I.O. and by this time, or before SIT took over, it has been learnt by the first I.O. and his entire team as to which blunders were committed on that day and therefore there may be conscious efforts to make it up. On the day when for the first time the statement was recorded as has emerged now on the record certain facts were not recorded in the statement. In the facts and

circumstances of the case, it is unsafe to believe the statements as completely truthful version because had it been so, each police official should have stated about the presence of A-37 as many others when investigated by SIT and when deposed by the victim witnesses before the court and stating before the SIT, the presence of A-37 has been unearthed. The presence of A-37 is held by this court to be undoubtedly at the site in the morning but none of the police PW says so hence it is not safe to depend on them qua presence of any of the accused is concerned. However, as far as all other contentions except the presence of the accused are concerned, reliance can be placed on police because efforts of the police is noted mainly to consciously conceal presence of selected accused.

(e) In nutshell, this court humbly but firmly believes that though normally contradiction between one prosecution witness viz a viz the other witnesses is not permissible in law and more particularly section 145 is applicable only when the very same person makes two contradictory statements it is to be noted that the principle is, the restriction is that, the adverse inference from such contradiction cannot be drawn by the Court. In the instant case, when two police officials or one police officer and his subordinate police official state that they were together at the site, it is permissible to have a comparative analysis of the statement and testimony of the two as one of the tests of credibility of the witness. Since attempt to conceal the presence of accused like A-37 and others have been made right from 28/2/02, this court firmly believes that larger interest of justice demands not to held involvement of any of the accused as proved in a case when only police official states about such involvement of the accused.

(f) No doubt, none of the members from the team of any previous investigator has been found to falsely roping any of the accused but still, as a safety measure the test of credibility of the witness has to be made more stricter and involvement of the accused basing on the oral evidence of the police witness alone needs to be avoided.

(I) PW- 264 (eyewitness at the point of Nurani) :

(a) It is admitted position that the witness is residing at Naroda, was residing at SRP Quarters right from his childhood viz. from when he was in standard 4th, in the year 2002 also he was residing in SRP Head Quarters at Patia, his first posting was at Naroda police station where he continued in his job for 6 years and thenafter from the year 2006 till the date of deposition he was with the nearby police station viz. Sardarnagar police station, thus this witness is residing in the area where the offence has been committed and is also employed in the police stations of the same area.

(a-1) Normally, this witness since is residing in the same area from his childhood must be acquainted with different persons of both the community. It is more so when he is working for about 12 years in the police, firstly at Naroda police station and thenafter at Sardarnagar police station.

(a-2) The overall tendency of this witness was noticed to depose the facts about commission of the offence involving the mobs. He was found leaning to defence and has not been noticed as a fair witness. He was agreeing with any suggestion

given by defence.

(a-2-1) The defence has suggested that the Muslims were throwing burning rags, tube lights, glass bottles, bulb from Nurani Masjid and from surrounding Muslim houses, to this the witness readily agreed without thinking for a moment that Muslim houses are behind Nurani and shops are surrounding Nurani Masjid.

(a-2-2) Another suggestions were, the mob assembled out of anxiety, no Hindu has injured or burnt any Muslim etc.

(a-3) At para 60, the witness has admitted to have stated in his statement of 2002 that, he has a memory by which he remembers all political leaders, social workers, leading persons and residents of Naroda by name and by face as this comes in his duty that he has not seen A-20, A-19, A-43, A-18 and A-24 to whom all he identifies by seeing. At para 62, he has stated before the SIT that he has not seen Mayaben Kodnani to whom he knows.

(a-4) From the cross it is clear that the fact that the defence was in know of the childhood's address of the PW, the defence knew the place of first posting of the PW and when the witness is seen helping the accused he desired to help through his testimony, this Court is of the opinion that it is better not to rely upon this witness except for general facts and procedural facts.

(b) The witness seems to be in habit of giving affirmative statement without knowing any details of the

suggestion. Para 77 of the testimony where without knowing Fatimabibi the PW came out to defend his police colleague.

(c) At para 79, when the defence is suggesting that the burning rags were thrown by Hindu as well as Muslims the witness jumps to help the defence and in his all enthusiasm he states that the burning rags were not at all thrown by Hindus. This conduct of the witness shows he goes even against the prosecution case.

(d) This witness has involved A-1, 3 and 27, but the overall impression of the witness in the judicial mind counsels that it is not safe and prudent to rely upon this witness as far as involving or not involving accused are concerned. The witness is not found to be sincere in his testimony except the general version about the occurrence.

(e) This witness has stated that the driving of TATA 407 was one of the reasons to provoke the mob. He has also tried to put up the defence version in his own way.

(f) This witness has deposed that he had duty at the point of Nurani on the date of the occurrence, from 9.00 a.m. mobs have started assembling, the mob attacked on Nurani, ransacking, breaking the property, torching the nearby shops and dwelling houses, looting in the Muslim chawls, occurrence of police firing, death near the water tank etc. had happened on that day. All these involve members of the mob and that only to this extent this witness is helpful to the prosecution.

FINDING OF PW- 264 :

(a) This witness proves morning occurrence at Nurani viz. torching nearby shops, dwelling houses, attack on Nurani, assembly of mobs, police firing etc. and the incident of evening occurrence.

(b) This PW involves A-1, A-27, A-3 in the morning occurrence who shall not believed as a sole witness to involve the three accused. However, his this identity may be used as corroboration only if from other reliable evidence, involvement of that accused stands proved.

(II) PW- 265 :

(a) This police witness was assigned the job outside the ST Workshop on the date of the occurrence, he is an eyewitness, on duty police official. The main points of the deposition of the witness is to the effect that, at 9.00 a.m. The mobs started coming from all the sides, it went near Nurani, the superior police officers came there, the witness was incharge of his team there, who did lathicharge, he states at para 6 and 26, his opinion about TATA 407 which when read with para 34 and 35, it clarifies that the witness has no personal knowledge about the occurrence of TATA 407.

(b) The witness states about the attack on Nurani Masjid, the torching of surrounding shops, the fact of firing and teargas, the number of the mobs were in thousand, the mob at Nurani was the mob of Hindus, which all is supporting the prosecution case.

(c) This witness has stated that when this Hindu mob was trying to unduly enter into the Muslim chawls, the Muslims attacked along with weapons. This if read with para 36, it is getting clear that the witness has seen this from very far off.

He further states that the mob of the Hindus which was giving slogans of kill, cut, which was torching the houses has A-1 and A-27. He gives the name of both of them along with their addresses. He states about the overt act of the two of throwing burning rags and stone-pelting, he identifies A-1 and A-27. Even this is helping the prosecution case.

(d) At para 23, the witness agrees to the suggestion that at about 10.30 to 11.00 am disturbances did not start at his point. He, however, clarifies that the mobs were assembling.

(e) At para 37 an attempt has been made to exclude A-20, A-19, A-43, A-18 and A-24 through the statement of the year 2002, but in this para itself it is getting clarified that the part of the statement reproduced in the testimony relates to the time of 19.30 hours of the day of the occurrence. When according to prosecution case, the 5 accused were present in the morning, the question about their absence in the evening is hardly relevant. Hence, through this witness, the defence could not create the ground for the 5 accused - A-18, 19, 20, 24, 43, about their absence in the morning occurrence. What is utmost important is this PW involves A-1 & A-27 only hence here only their involvement or otherwise needs to be decided.

(f) This witness was consistent and credible and except an unsuccessful attempt of defence of creating the defence of

free fight and a justification for the riot, there is nothing on record to doubt the version of this witness.

FINDING OF PW- 265 :

The presence and participation of A-1 and A-27 stands proved in the morning occurrence by the PW beyond all reasonable doubts. However, as a policy his testimony shall be used to second the involvement of the two.

(III) PW- 266 :

(a) This witness was a wireless operator of the police van known as Naroda - I, with the first I.O. - PW- 274, this witness was with first I.O. in the patrolling duty who states about the offences of 27/2/02.

(b) The occurrence of 28/2/2002 at Patia at about 9.00 a.m. or so, the police firing after about 10.30 am and the fact that A-18, 19, 20 & 24 were present at the site have been deposed. The role ascribed is that these accused were talking with each other.

(c) Since talking with each other cannot be termed to be an overt act towards the commission of offence this witness is held to have been not linking any of the accused with the crime.

(d) No valid doubt is created against any of the official act done by this witness and no effective challenge has been made to the proprietary of the said performance of his duty.

This witness proves the police firing, occurrence of morning, presence of mobs, occurrence of noon, the position at the water tank etc. which all are also stated by the Pw. This is credible since corroborates the victim PW.

FINDING OF PW- 266 :

This witness proves the police firing, occurrence of morning, presence of mobs, occurrence of noon, the position at the water tank etc. It is held that this PW does not link any of the named accused with the crime.

(IV) PW- 267 :

(a) This witness was in the patrolling duty with PW- 276, who was an assignee officer of first I.O.. The PW was in the requisite vehicle and was an armed police official. This witness speaks of presence of Shri V.K. Solanki, complainant at site at about 10.30 a.m. whereas neither his officer PW -276 nor even Mr. V.K. Solanki - PW- 262 himself deposed to have arrived at site at about 10.30 a.m.

(b) This witness involves A-1, 3 and 27 in the crime at the site. In fact, he was an armed police official on duty with PW- 276, hence it can safely be inferred that he cannot remain away from PW- 276 as though they were at site, they were on patrolling duty and anytime on instruction of PW- 276 he was required to move from the place. Now therefore it is clear that PW- 276 and PW- 267 must be together. PW- 276, the PSI does not involve any of the accused, whereas, his subordinate police official though was at the same place involves A-1, 3 and 27. In

view of his irresponsible statement of the presence of Shri V.K. Solanki the PW cannot be held to be dependable. His irresposibility creates doubt in the judicial mind hence qua the involvement of the three accused it is not safe to believe this witness.

However, if any of the victim eye-witness is stating about the presence of the accused the same is most credible because the eye-witnesses have mostly remained at the site right from the 9.00 a.m. or 9.30 a.m. as against the police official who visited the site and then go away on their duty point. Moreover, their interest in the occurrence would certainly be different then the interest of the injured, eye-witness, victim or complainant, hence the police official cannot be compared inter-se as test of their credibility.

FINDING OF PW- 267 :

Involvement of A-1, A-3, A-27 have been granted benefit of the reasonable doubt qua this PW.

11. PW- 268 (P.S.O. OF NARODA POLICE STATION) :

(a) The witness was on duty PSO from 8.00 p.m. of 28/2/02 to 8.00 a.m. of 1/3/02. This witness deposes on oath that he has registered the complaint of Exh.1773 filed by PW-262 (I-CR 100/02), he issued the report of declaration of commission of crime u/s.157 of Cr.P.C. and thus, Exh.1796 Station Diary and Exh.1797 the Report of Declaration of offence have been proved on record. Through the witness the vardhis of Exh.1798 have been brought on record which the

police official who has given the vardhis from the Hospital has also stated. This is the abstract of vardhi book of Naroda police station.

(b) During the course of the cross the document of Exh.1799 is brought on record to fortify the submission that the name of the five accused mentioned in complaint of this case at complaint - Exh.1773 has the same sequence which Exh.1799 the compliant of Naroda Gam I-CR No.98/02 has.

This court does not see any shadow of doubt if the names of the accused are written in similar sequence in both the complaints. This court firmly believes that there is nothing to be doubted about. These are all ministerial act, one fails to understand what is to be doubted about.

(c) Another submission is with reference to the time of commission of the offence in the complaint of Naroda Gam. The time of the offences are shown to be as 12 noon to 14.00 hours. The police officials have deposed to have seen the accused at Naroda Patia, hence they cannot be at the site of Gam. As a result both the complaints needs to be held as bogus, concocted and the presence of the accused cannot be relied upon.

(d) Firstly, Naroda Gam and Patia has a little distance hardly of ½ km. which can easily be covered up and the span of two hours for commission of the offence suggest being at both the places is probable.

(d) It is nobody's case that for entire two hours the five

accused were present at Naroda Gam only and have not moved from there. When distance is hardly of half a kilo metre and when the mentioned five persons are projected as political leaders it is very much probable and natural that they would make all attempts to project themselves at both the places and looking to the distance factor it is not improbable.

The another version to falsify the complaint Exh.1773 of this case therefore does not survive,

(f) Secondly, it is most important to note that the victims of the crime or the eye-witnesses have not involved the five between 12 noon to 2.00 p.m.. They have seen some of the accused in the morning occurrence and in the evening occurrence and some of them were seen in the morning occurrence which was upto 12 noon or 12.30 p.m. Considering the above discussion the defence document of Exh.1799 does not create any doubt against the prosecution case.

(g) By the cross-examination no doubt is created against the proprietary of the official act done by this witness and no doubt is left out in the genuinity of the process adopted by this witness. The witness does not involve any accused, he is credible as far as the procedure observed and adopted by him for the official act. It is opined here that the forceful submission of the complaint to be antedated and ante-timed falls on ground and that nothing comes in form of rebuttal to the presumption of proprietary. The submission of the FIR being antedated and ante-timed has been appreciated at an appropriate part of the judgment. Suffice it to say that it is not found logically supported.

FINDING OF PW- 268 :

This witness proves the proper formality of the station diary Exh.1796, the report u/s.157 Cr.P.C. Exh.1797 and vardhis at Exh.1798, which all being official act it enjoys presumption of proprietary.

12. PW- 262 (COMPLAINANT OF I-C.R. No.100/02 & EXH.1773 - THE COMPLAINANT) :

(a) EXH.1773 – THE COMPLAINT :

(a-1) Exh.1773 is the complaint of I-CR No.100/02 filed at Naroda police station by PW- 262. What is unusual in this complaint is that this complaint is filed by the PSI of the Naroda police station and in this complaint about 121 other complaints have been merged which are inclusive of I-CR No.111, 115, 117, 127, 129, 130, 153, 161 to 164, 176 (about 49 complaints have been merged into this including the printed complaints given). In I-CR No.177/02 about 28 complaints have been merged. In I-CR No.179 to I-CR No.185, I-CR No.187 about 8 complaints have been merged. In I-CR No.188 about 12 complaints have been merged. I-CR No.204, 208, 210, 238 and 267 all of 2002 have also been merged in I-C.R. No.100/02.

(a-2) Unlike the usual complaint this is a peculiar kind of collection of numerous complaints and PW- 262 is the complainant of only one complaint. The other complainant PWs have deposed and proved the contents of their complaints and the appreciation of their evidence has been done at Part-5 or 6

of this judgment, hence the same has been avoided to be repeated over here.

(a-3) In this complaint of EXH.1773, the time of commission of offence is shown to be 11.00 a.m. to 20.00 p.m. but several complainant PWs have stated the time of the occurrence to be 9.30 am onwards which is more credible mainly for the reason that even according to PW- 262 he reached at site at about 11.00 or 11.30 a.m. Hence he cannot say for sure that the occurrence were not started at about 9.30 am onwards or say before 11:00 a.m.

(a-4) In the humble opinion of this court if para 6 and 41 of the testimony of PW- 262 are read it is clear that he supports the eye-witness, victims, complainant and the injured. They all should be believed as when PW- 262 was admittedly not present at the site upto 11.00 or 11.30 a.m. how can he say anything about 9.00 a.m. or 9.30 a.m. say upto his arrival. In nutshell, this complainant cannot falsify the numerous eye-witnesses, victims, injured and the complainants who were present at the site right from the morning.

(a-5) The time of giving the complaint – Exh.1773 was 20.45 p.m. which stands proved by the PSO of the Naroda police station, PW- 274, this witness. There is nothing on record to doubt the proprietary of the procedure for the official act adopted by the PW.

(a-6) Through the complaint the contents about the morning occurrence, the noon occurrence and the evening occurrence along with the leadership of the five named

accused as leaders of VHP and BJP is on record.

(a-7) The complaint filed by PW- 262 has benefit of presumption of the proprietary of the procedure. As far as recording of the contents, as were spoken, the appreciation of oral evidence of PW-262 is must. In the facts, the appreciation of oral evidence of PW-262 is must with a clarification that even for testimony of this complainant police official court is on its guard and has not believed the involvement of any accused solely on his testimony.

(b) ORAL EVIDENCE OF THE COMPLAINANT :

(b-1) At para 90 the witness admits that since he has not witnessed any occurrence he has not given any wireless message.

At para 83, he states that he has not only stated at Exh.1773 - complaint what was only seen by him, but he has also stated what is heard by him.

The above two clarifies that the witness does not have personal knowledge of all the contents in his complaint and that when he is a police complainant his complaint in the public interest can also be based on what is heard by him as he is duty bound to put criminal machinery into motion but then, that hearsay is not evidence.

(b-2) If para 69 and 84 are seen the witness has reached at the water tank after 00.30 am of 1/3/02, he has seen all the 58 dead bodies at the site of water tank of the evening

occurrence. His seeing the 58 dead bodies at the site has not been substantially challenged, hence it proves the prosecution case to that extent.

(b-3) At para 77, the witness has deposed that the five accused were political leaders and he knows them since they used to come to the police station.

Exh.1744 is the card of Peace Committee of A-20, the card of A-20 shows that he was a leading personality of the area which supports the prosecution case.

(b-4) Through the complaint and while reading it with the deposition of victims, the witness proves the occurrences to have taken place at Nurani Masjid, in the Muslim chawls, behind Nurani and of the water tank.

The facts stated at para 70 strongly supports the occurrence wherein highest death toll of Muslims was reported at the water tank occurrence on that evening.

(b-5) This witness had been with Shri Sureliya - PW- 296, the assignee officer of first I.O. while drawing the panchnma of the site of the offence.

(b-6) At para 26, it stands proved that the witness did not have a duty on fixed point on that day, but had duty of patrolling in the entire area of Naroda police station. It is therefore clear that the witness cannot be all the while at the site of the offence. Hence, his oral version should be believed even for corroboration for the parts which is corroborated by

the oral version of victims, eye-witness, complainants, injured, etc.

(b-7) If para 61 & 63 are read together, he ascribe the role to the five accused of leading the mob, giving the slogans and provoking the mob. The other witnesses who also states to have seen the five viz. PW- 274, PW- 277 and PW- 266 ascribe them the role of talking with each other. The witness has also admitted that he does not know as to the five belong to which mob. Putting all these things together it would be in the fitness of the things to believe and accept the role ascribed by the eye-witnesses, injured, complainants to the five accused because all the five are such a leading personalities that they cannot conceal their identity and the Muslims at the site would tend to identify them along with the role played by them. The role ascribed by the police PW being inter-se so different that it does not sound prudent to believe anyone of them as far as their version alone is concerned and as far as the accused are concerned.

(b-8) Para 10 supports the theft of gas cylinders from Uday Gas Agency and to have used the same in the offence.

(b-9) This court has reason to doubt the police PW when the police officials are noticed to have made conscious efforts to avoid showing presence of A-37 at the site which has been proved beyond all reasonable doubts through the eyewitnesses, victims, complainant PW.

(c) FINDING OF PW- 262 :

(c-1) The witness proves the occurrences to have taken place at Nurani Masjid, in the Muslim chawls, behind Nurani and at the water tank, on the date of the occurrence, on the time with inclusion of 11.00 to 20.00 p.m.

(c-2) The presence and participation of the named accused viz. A-20, A-19, A-43, A-18 and A-24, is held to have been not proved beyond reasonable doubt qua the PW.

(c-3) This PW should have taken care to inform I.O.-1 and I.O.-2 that even Nurani masjid was also site of the offence but, it seems though he was called upon by I.O. No.-2 to draw the panchnama of the site of the offence, he did not highlight site of Nurani before the I.O.No.-2.

13. FIRST I.O. AND HIS ASSIGNEE OFFICERS (PW- 274, 276, 296, 297)

(I) PW- 276 :

(a) This witness is an assignee officer who was assigned patrolling duty in the requisite jeep, the witness proves the occurrences dated 27/2/02 and then different occurrences, the procedure adopted, the action taken, presence of PW- 274, the fact of presence of his superior officers - Shri Rana and Shri Gondiya viz PW- 277 & 294 at the site, fact of police firing, the fact of the morning occurrence, evening occurrence, his having drawn the panchnamas and recorded the statements of the witnesses have all been deposed. This witness does not involve any of the accused, no reasonable doubt is created against the proprietary of the official acts he has preferred and his senior

officers have preferred. Most of these facts have also been stated by the eye-witnesses, complainant, injured, victims. This PW supports the victim eyewitnesses and thereby the prosecution case.

(II) PW- 296 :

(a) This witness is an assignee officer of first I.O. who under the instructions of the first I.O. has drawn numerous panchanamas and has also recorded statements of many witnesses.

Exh.1749 Part 1 to Part 4 is the panchnama which was of the place of offence, which was drawn for continuously 4 days in presence of complainant, as is on record. The panchnama for the damages of property was drawn at Exh.2036 to 2049 which were respectively for I-C.R. No.117, 130, 162, 165 and 185. The witness has also drawn panchnama of I-C.R. No.161/02 at Exh.384 of property of the PW-45.

The four panchnamas vide Exh.1349, 1303, 2041 and 219 were drawn for identification of dead bodies.

(b) Over and above this the witness has also recorded numerous statements. This witness does not involve any accused. This witness is witness of procedure and there is no material on record to doubt the procedure except the lacunas already highlighted. The overall omissions and contradictions of the statements of the statements recorded by the witness is not of such an importance as has already been discussed.

FINDING OF PW- 296 :

The drawing of the panchnama of the site of the offence, the identification of the dead bodies and recording of the statements on record to an extent accepted by the victims have all been presumed to have been performed with all requisite proper procedure.

(III) PW- 297 :

(a) This witness was asignee officer of the first I.O. who was instructed to record statements of the witnesses and to draw panchnama for the damages of the property. He did draw the panchnama with reference to I-C.R. No.115, 129, 153, 181, 182 and 183.

(a-1) For the property of PW- 2, 40 and 41 he has respectively drawn panchnamas from Exh.2046 to Exh.2048. Moreover he has also drawn panchnama at Exh.1345 to 1347 for the complaints at I-C.R. No.181 to 183.

(a-2) In all he has drawn 6 panchnamas for the damages of the property. He has also recorded a statement as he was directed.

(b) This witness does not involve any accused the procedure done by him is not doubted in any manner as there is no material on record.

FINDING OF PW- 297 :

Through this witness about 6 panchnamas of

damages are on record with proper procedure.

(IV) PW- 274 :

(a) This witness is the first I.O. whose several lacunas have been discussed at length at Part-2 of the judgment. Here it sounds fitting to begin from the questions by the Court on which there was no cross-examination from either sides.

(a-1) The witness is admittedly having experience of about 28 years in the police department inclusive of the experience of 9 years as PI and of 19 years as PSI.

(a-2) The witness states that he has no experience of handling any riot case and that, he has not seen any riot. This PW, as I.O., has not done the investigation of the crime upto the mark, that he has not shown any inclination to scientific investigation which would have been of great assistance in bringing out the truth in more effective way. He has been proved to be very ineffective and inefficient I.O.

(a-3) At para 225, the witness admits that, in the two occurrences took place on 27/2/02 the victims were Muslims and that the two occurrences can be treated to have been taken place in retaliation of Godhra carnage. At Exh.2084 & Exh.2085 the complaints of I-CR No.96/02 and 97/02 were produced by the PW in response to the questions by court. The two incidents have taken place in the quick succession within 18.00 hours to 19.30 hours. These complaints are related to having burnt two shops of the Muslims and a physical violence on the Muslims. In fact, if the contents of the complaints are

read, it is quite alarming and any alert officer should immediately arrange for better bandobasth smelling something fishy in the affairs. The complaints have been taken on book after more than about 4 hours and it is an admitted position that none was arrested with reference to the two complaints in both of which the victims were Muslims.

(a-4) The witness states that in both the incidents he reached at the site after the occurrences were over and he does not know anything about the contents of the complaint. PW- 266 was together with this witness who states that they went at the site and the mobs were dispersed by them. If the persons of the mobs were present there it was the duty of this witness to inquire with the witnesses of the occurrences and to initiate immediate action which could have sent a right signal to all concerned. The witness could have taken many many actions to unearth the scheme of conspiracy since was hatched by the accused for 28/2/02.

(a-5) The sting operation reveals that A-18 has collected firearms and has made all arrangements to make success of the call of the bandh on 28/2/02. If one stitch would have been taken on time by this witness it could have certainly saved more than nine.

(a-6) The witness was senior PI of the Naroda police station who had to perform a duty on a very wide scale including the patrolling duties, taking care of law and order situation in each part of his jurisdiction etc.

(a-7) At para 213, the witness admits that he has no

personal knowledge about the situation at Nurani Masjid before 10.30 am of 28/2/02. What is surprising is though he does not know it he has informed the police control room message about “all is OK, through the report from Naroda-I”.

(a-8) If Exh.1786 brought on record by defence is perused, it can be seen that the witness has conveyed to police control room at 10.00 a.m. that “all is OK in the area of Naroda police station”. How wrong the witness was, can be made out when the deposition of PW- 294 the DCP of the area is perused, where that witness admits at para 70 read with para 11 that at 10.00 am of the day he got wireless message that the mobs of Hindus and Muslims have became violent at Naroda Patia and that he received another message quickly because of which he left a very sensitive Dariapur police station area to approach Patia. When the DCP receives message why the witness has not received. As it may be, but the fact remains that the witness is not noticed to be as vigilant as he should have been even after two occurrences on 27/2/02 after Godhra carnage.

(a-9) If Exh.1786 is read, which is the log book of Naorda-I vehicle, it is clear that not only the two occurrences on 27/2/02 were alarming but even the message given by Sector 2 at 23.45 of 27/02/02 is equally alarming. It seems that the message of Sector 2 has also not been taken seriously by the PW to arrange for strict patrolling and the bandobasth at the places where in the past some occurrence has taken place.

(a-10) The witness states that about 83 occurrences have taken place, about 171 teargas shells were bursted and about 91 round of firing in air and targeted firing had to be done.

This shows the gravity of the occurrence spread on the entire day. In light of this background, no police witness would keenly observe the activities of the accused, it would be observed in general.

(a-11) The complaint Exh.1773 was recorded before the witness who states at para 216 that the disturbances and the stone pelting near Nurani was ongoing at 10.40 a.m.

Even though this is the situation in the complaint before him the witness records the time of the occurrence to be 11.00 am onwards which shows total carelessness of this witness.

(a-12) Para 217 if read with para 220 then it is becoming very clear that in any case, the time of the occurrence of the water tank was before 6.30 pm, there were 85 victims including the 27 who could survive and that the witness himself reached at the site which was near Gangotri society on the backside of Hussian Nagar where several people were burnt alive and about 58 of them died there who all were burnt by sprinkling or pouring inflammable substance.

(a-13) At para 218 there is still further clarification about the site of the evening occurrence which was a khancha covered by three sides, from where the witness did the and only one commendable job of taking the 27 burnt Muslim persons to the hospital for their treatment.

(a-14) At para 222, it is becoming clear that numerous occurrences of torching of dwelling house with the help of gas

cylinder took place for which the uday gas agency was robbed.

(a-15) At para 224, it is clear that the people started assembling on road leaving their houses right from 8.30 am of the day which is supporting the testimonies of witnesses.

(a-16) The point is, inspite of this unusual situation, the message of the Zone 2 at 23.45 hours, the occurrences of torching Muslim shops and giving grievous hurts to Muslims, the witness did not receive any signal and he let the grass grow below his feet. It is for this reason and many many other situations this court is of the opinion that this witness is largely responsible for the situation that took place on that day, but then, there was neither malice nor bias for the victims.

(a-17) One thing which this court would like to clarify here is that, that every carelessness or every easiness cannot be seen with criminality. Criminality is to be proved by credible, clinching and positive evidence to be proved beyond reasonable doubt which does not stand proved in the case of this witness.

(a-18) Throughout the trial it was felt that by not holding the TI Parade in the beginning itself, the witness has not performed his duty but if the explanation at para 227 is seen then the explanation seems plausible one. It is matter of fact that after the date of occurrence for more than one month of the riot the disturbances and the curfew situation had continued hence, it must be difficult to arrange for T.I. Parade.

(a-19) While discussing PW- 200, Exh.1796 and the

testimony of this witness read with testimony of PW- 327 it is crystal clear that the attempt of all the previous investigators and their team members of putting all the burden on the occurrence of TATA 407 involving PW- 200 is not worth believing.

Exh.1798, the vardhi clarify that the vardhi for the accident of TATA 407 has been recorded at 21.30 hours of 28/2/02 in which the time of the accident is mentioned to be 10.30. Now, if para 11 of the deposition of this witness is seen, according to him this occurrence of TATA 407 took place at about 11.30 a.m. The site of the offence is mentioned as ST Workshop, but no accident has taken place near ST Workshop but it was near ITI Crossing, Naroda. Now what has taken place near ITI Naroda can never be the reason for the disturbances near Nurani that too if the accident is after 11.30 am the disturbances cannot start in advance at 9.30 am.

In the same way this witness deposes in his deposition the occurrence of Ranjit to have occurred at 12.30 noon. The entire police department connected with the first I.O. is throwing the burden of the riot on the occurrence of Ranjit and TATA 407. This is very clear when the testimonies of the two senior police officers, this first I.O. and his subordinate are collectively read but then the disturbances have stated to have been started from 9.30 am onwards and according to this witness himself the mobs have started assembling from 8.30 am onwards. If the occurrence of Ranjit was at 12.30 noon how the disturbances can be after 9.30 a.m.

The only one inescapable conclusion is the

advancement of the causes of Ranjit and of TATA 407 as the causes for the riot are nothing but scheming of all those who shall have to share the responsibility of the riot of that day as it was their inability to maintain law and order situation

It is matter of common experience that in such situation to escape from the responsibility people shirk from their responsibility by advancing even feeble causes. This court firmly believes that had the witness, his superior officers and the entire team at Naroda police station would have been vigilant than the situation ought not to have worsen.

(a-20) The witness proves the police firing, the place of the evening occurrence, the place, date and time of the evening occurrence, the occurrence throughout the day etc.

(a-21) The witness has proved presence of A-18, 19, 20 and 24 in the occurrence but then according to him they were inter-se talking to each other which cannot be termed to be sufficient overt act to prove their participation in the offence. The witness is deposing on many many occurrences throughout the day as narrated by him in his testimony.

(a-22) No doubt is created about the intention, presence at the site and different procedures to perform the official act been adopted by the witness. There is no rebuttal to the presumption of proprietary as far as different duties performed by the witness is concerned as a part of investigation except the duty performed in getting the statements of the witnesses recorded. The appreciation of the testimony of this PW shall be done in light of the theory adopted by this court at Part-2 under

the heading of 'Appreciation of the previous investigation in general'.

(b) FINDING OF PW- 274 :

(b-1) The witness proves the police firing, the place, date and time of the evening occurrence, the occurrences throughout the day etc.

(b-2) The witness to corroborate the presence of A-18, A-19, A-20 and A-24 in the morning occurrence if any of the reliable victim prosecution witness so established.

14. SUPERIOR OFFICERS OF FIRST I.O.

(I) PW- 277 :

(a) This witness was ACP, who though proves presence of A-18, 19, 20, 24, but he states to have seen them talking inter-se, thus he does not prove any criminal overt act of the four accused. Moreover, this court has adopted the practice at Part-2 of the judgment under chapter of 'Appreciation of the previous investigation in general', according to it, this fact alone is not sufficient to bring home guilt of the accused. This is to be kept in mind.

(b) The witness deposes as initial I.O. of I-CR No.238/02, complaint Exh.880, FIR Exh.317 in which he did investigation upto 30/4/02. This witness also proves the panchnama Exh.888, and panchnama Exh.1868 all related to Mobile along with the muddamal Mobile, the endorsement and signature of the

witness on the complaint, on the report u/s.157 of Cr.P.C on panchnama Exh.662, 2049, on many inquest panchnamas, on the permission to fill-in inquest, the endorsement and signature below the FSL despatch note and the fact that numerous statements were recorded by the witness and the supervisory work was also done by the witness.

(c) As far as all those official acts are concerned no doubt is created about the proprietary of the said official acts performed by the witness and that in light of the complaint, testimony of the complainant witness etc. the case stands proved by the witness about the proprietary of the procedure adopted.

(d) The witness was questioned by Court which all have been recorded from para 165 to para 210. The gist of the said questions and the points proved through the same are jotted down below :

(d-1) The witness knew about the occurrences to victimize Muslims of 27/2/02. The witness went there, where he found several members of the public, may be onlookers. The witness does not know anything about the investigation in those two complaints. The witness admits that the two incidents of 27/2/02 pertaining to property and human body were alarming. The witness states that upon this he has counseled PW- 274 to requisite more vehicles and to arrange for proper bandobasth in Muslim areas.

As is a matter of record, inspite of this PW- 274 has not made proper bandobasth to an extent that even where the

Muslim chawls end and Hindu society begins the PW- 274 has not made any special arrangements to protect Muslims in case of attack on them.

(d-2) The witness has also advised PW- 274 to arrest unsocial elements, but even that has not been done. The witness admits that inspite of disobedience of his instructions he has not initiated any action against PW- 274.

(d-3) The witness admits that he has not made any research as to how many percentage of the population is that of Muslims, Hindus and other community.

During the course of the cross examination of PW-294 this information comes on record which has been contended by the witness in his affidavit at Exh.2015 filed before Hon'ble Nanavaty Commission. According to the affidavit the percentage of the population in Naroda area was 4.44% of the total population.

(d-4) Only before 27/2/02 there was festival of Eid and according to the witness, PW- 274 has not increased more police points then the three kept for the Eid.

This shows that PW- 274 has totally underestimated the situation and he has treated the threat to Muslims on account of Godhra carnage equivalent to Eid.

(d-5) The witness is unable to produce any letter by which more police staff was sought from the office of police commissioner to meet with the specific situation which shows

that no such attempts were made.

(d-6) At para 174 the witness highlights that the Muslim dominated areas are behind Nurani and opposite Nurani in front of ST Workshop. Whereas, the Hindu dominated areas were Gangotri and Gopinath society which were adjoining each other were at the water tank. In fact the police point ought to have been kept at this water tank as admitted by the witness.

(d-7) The witness admits that most of the Muslims in this area are from Karnataka and Maharashtra who are mostly labourers, illiterate or very less literate and that the arrangement for the security of their lives and properties was insufficiently made on that day.

(d-8) The witness agrees to the opinion that more vehicles ought to have been requisitioned for that day and such more vehicles can even be handled by ASI or head constable. This is with reference to the excuse shown by PW- 274 that for lack of PSI he could not requisite more vehicles but this witness fairly admits the lack of management.

(d-9) The witness admits at para 181 that the serious offences against human bodies were more committed at the internal places where the police points were not arranged otherwise the occurrences were quite stray.

The witness admits that he could not foresee the possibility of communal riot in case of insufficient police points.

(d-10) At para 184 the witness admits that while at 10.30

am he reached at Nurani, the stone-pelting by Hindus was ongoing and that in the statement before the witness PW- 156 has stated the time of the attack at Nurani to be at about 9.30 a.m. It is astonishing that still in the complaint at Exh.1773, the time of the offence has been bluntly shown to be 11.00 am onwards.

(d-11) Para 185 reveals the fact that from the van of PW-274 the message of “all OK at Naroda” was given but the fact of assembly of mobs at Nurani was not given. The witness admits that after seeing the occurrence at 10.30 am at Nurani the message of all OK was not the revelation of the true situation.

(d-12) It is also admitted that had the correct situation been informed to the police control room instead of all OK, the situation could have been properly assessed by the authority at the police commissionerate office.

(d-13) The witness explains at para 190 the purpose of supervision of the situation by a senior police officer. But then, till 8/3/02, neither arrangement of TIP, FSL visit or help of dog squad was taken. Inspite of the fact that witness considers this to be serious offence.

(d-14) None of the persons is admittedly arrested for breach of curfew order and that while in the morning the situation was under control, the right steps in right directions could have helped in not flaring the communal riot and it could have lessen the offences there.

(d-15) Even after knowing that several karsevaks were from Nava Naroda, no special arrangement were made, no statement u/s.164 Cr.P.C. was recorded, there were many ways to go to the site of evening occurrence.

(d-16) Upon the conjoint reading of para 196 to 198 it stands proved that had the police been alert in the morning itself, the scene could have been different.

(d-17) Even no message by the Naroda-I wireless was given about the stone-pelting as is admitted, the statement of uday gas agency or the complaint of uday gas agency has not been placed on record, no yadi for the treatment if at all given to the injured of police firing is placed on record.

The fact of the people to be beyond control, the situation to have been uncontrollable, the fact that even unarmed policemen were also given firearms, the fact that armed policemen were not sought from the police commissioner, the fact that two persons had died and five to six had injured in police firing have not been taken seriously as no procedure for facilitating compensation for such victims were made, the fact about the securing bullet remains or drawing any panchnama or proceedings as to where the remaining bullets were hit has not been done, which all show that all the police officers were responsible for the situation of that day.

(d-18) He admits at para 208 that the initial days of the offence are the best days for proper investigation and that scientific evidence should have been collected. The witness was pained at the end of his testimony that in the riot he could not

use his past experience also.

(d-19) It is matter of fact that after noting down the complaint at Exh.1773, no actions were initiated to arrest the accused, to start immediate investigation of the crime and to provide proper treatment to the injured of police firing.

The PW has supported the prosecution case.

(e) FINDING OF PW- 277 :

(e-1) The witness proves the police firing, the place, date and time of the evening occurrence, the occurrences throughout the day etc.

(e-2) The witness to corroborate the presence of A-18, A-19, A-20 and A-24 in the morning occurrence if any of the reliable victim prosecution witness so established.

(II) PW- 294 :

(a) This witness was DCP at that point of time, who proves the occurrence, does not involve any of the accused. He supports the prosecution case quite strongly, does prove different occurrences of the day, the procedures adopted by him and by his subordinates, the fact of police firing, the fact about noon occurrence, the fact about evening occurrences, the fact of saving the lives of Muslims from the site of the offence at the evening, the procedure adopted to take away the people to the relief camp, the fact of 95 police firing and bursting 171 teargas shells at Naroda Patia and the fact of two

persons to have died and five persons to have been seriously injured.

His affidavit at Exh.2015 is on record, brought by the defence, there is absolutely nothing on record to raise any doubt about the proprietary of the offical act done by the witness inspite of the fact that there were numerous lacunas and short coming in the investigation of the crime.

(b) During the questions by the court the witness admits that his priority was the affairs at Dariapur police station which according to him was for the reason that it was more communally sensitive area.

This witness admits that the attitude and tendency of the mob, the targets of the mob, the sites selected by the mob and the amount of number of miscreants in the mob were all unusually different then it used to be noticed in case of usual bandhs.

The witness supports the suggestion that the decision of the curfew was delayed which can be taken within 10 minutes. This court believes that the curfew if would have been imposed at 10.00 or 10.30 am the situation could have been absolutely different.

FINDING OF PW- 294 :

This witness also supports the prosecution case quite well.

15. SECOND I.O. AND HIS ASSIGNEE OFFICERS - PW-

178 (I.O.) & PW- 292 (assignee officer of PW- 178)::

(a) During short tenure (8/3/02 to 30/4/02) of the investigation, this witness, has videographed the site of the offence which gives a very clear picture of the then position of the Muslim chawls, the clear account of destruction, damage caused to Muslim properties including dwelling houses.

(b) The additional panchnama of the site of offence at Exh.1556, and the panchnama Exh.1228 of recovering the shooted VCD by which muddamal article No.6 - VCD have been brought on record, have been discussed in the Chapter of Panchnama, which both panchnamas are held to be admissible and credible evidence.

(c) This witness has recorded the statement of the victims through his assignee officer Shri Pathak, PSI Shri Karoliya and with the help of police constable Shri Vikramsinh.

He has arrested about 19 accused like A-4 to A-17, deceased Dalpat, Jashwant alias Lalo, Raju Ratilal, Rajendra Bhat and absconding Nepali etc.

(d) Panchnamas for the damages of numerous houses, statement of victims and the mentioned panchnamas were drawn in the presence of PW- 292.

(e) PW- 178 has identified A-10, 11 and 16. He could not identify the other accused though were present, but it is indeed not important and it is natural since the officer is aged 64 years, is retired and is attempting to identify after about 9

years.

(f) During the course of the cross-examination this witness has deposed that the panchnama Exh.1556 was drawn for more clear identity of the Muslim chawls. As a matter of fact, in this panchnama the description of the place is there which may be in addition to the panchnama of the site, drawn by first I.O., but still the identity of the chawls is even not clarified in this panchnama as the officer has mentioned it numberwise.

(g) As is clear at para 51, the witness has verified that the VCD was blank before it was shooted by PW- 215 – the videographer. This adds to credibility of the VCD.

(h) At para 62, it becomes clear that there was a situation were the SIT was required to poise a question to this witness as to what explanation the witness would like to tender against the allegation that the statements during his tenure were not written as were stated by the witnesses.

This clarifies that the victims have serious grievances about the truthfulness of the statements written during his tenure which strengthens the opinion about the reliability of the statements. In light of the opinion of this Court, the omissions and contradictions from the previous statements cannot be attached any value.

(i) The question by Court shows that during the tenure PW- 178 has taken on record about 140 statements and 513 panchnamas of the properties, but quantity alone is not

sufficient. Inspite of the fact that he was aware that the investigation was with PI and the investigation has been given to him as he was ACP and it can be expected that he would do the investigation more efficiently but still he has apparently not done it satisfactorily. It is true that he and PW- 292 were given many additional important assignments, but that does not mean that they would compromise on quality of the work.

PW- 178 agrees that he ought to have recorded or verified the statements of injured or relative of the deceased and by doing so, the assignment given to him could have been truly made meaningful.

(j) He also admits that he has never gone to relief camp and he has never met any victim of the riot at the camp. This court firmly believes that unless the I.O. himself meets the victims how he can give justice to his work.

(k) He also admits that he has not made any attempt for recovery of the movable property robbed and for the recovery of the weapons. He admits that he ought to have called FSL while he did additional panchnama on 9/3/02, but the fact is he did not do all that what he now believes that it should have been done by him.

The witness does not remember that many of the statements were not relevant for the investigation or not which were recorded by Shri Pathak. The witness though does not admits, it is matter of fact that during his tenure most of the statements of Hindus were recorded when the victims of the case being investigated were Muslims.

The witness gives an explanation for the lacunas, but the fact remains that these lacunas have made the investigation subject of criticism and it has caused tremendous injustice to the victims.

(l) PW- 292 has helped to I.O. No.2 viz PW- 178 and I.O. No.3 - PW- 307. This witness admits at para-2 of his testimony that while inquiring at the Muslim chawls, he could not see any of the Muslim victim and he could only meet Hindu witnesses, hence he has recorded statement of Hindus, this shows that this witness was even not knowing that he was helping to the investigation of which case or else he must be knowing that the Muslims were then residing at Relief Camps and they were the victims of the crime.

(m) The witness admits at para-71 that he had the copy of the complaint while he was helping the investigation and that the Muslims whose dwelling houses and other properties were damaged, were not residing there.

This witness has hushed up so badly that he has even not given pause to listen to right surname of PW- 136 and has written wrong surname of the witness. It is indeed not prudent to rely upon such police officer fully who does his work without any sensitivity.

FINDING OF PW- 178 (I.O.) & PW- 292 (assignee officer of PW- 178):

The official acts done by the I.O.No.-2 do enjoy

presumption of proprietary as long as drawing of panchnamas etc. are concerned. The recordance of the statement shall be held credible to an extent accepted by the witnesses as, it is doubtful record.

16. I.O. No.3, Shri S.S.Chudasama - PW- 307 and his Assignee Officers & Officials.

(a) PW- 307 is the Investigating Officer who was handed over the investigation after completion of 60 days of the complaint viz. from 01/05/2002 while the investigation was made over to him, he had order of the Police Commissioner at Exh.2128 to merge the 28 complaints into I-C.R.No.100/02. In addition to the job of the investigation of this case, the witness was also assigned a job of supervision of other offences of riot.

A meeting was held to decide the mode and manner of investigation and that the investigation was then started by the witness. The main gist of the entire testimony of the witness can be understood on perusal of the following points.

(1) The witness has adopted the theory of preparing the teams of investigation and by going to the camp, they saw the organizers, leaders and lawyers at the camp and that they were recording the statements of the witnesses and were drawing the panchnama.

(2) The witness has deposed that he had 5 P.I., 11 P.S.I. and Head Constable, Police Constable and writer in his team, but if the deposition of about 17 Assignee Police Officers and considering the investigation by the witness himself and deceased A.A.Chauhan, the witness in fact had team of 9 P.I., 8

P.S.I. and one Head Constable in addition to himself. If the annexure tendered by the witness to his testimony is seen, the figure of 18 Assignee Officers tallies. It therefore, seems that what has been stated by the witness in examination-in-chief about his team member was his mistake.

(3) The witness deposed that he has obtained necessary literature collected by PW- 178 and Shri M.T.Rana. He adds S.376 of I.P.C. on 02/05/2002, he has drawn the panchnamas of physical state, seizure of the house of the accused, discovery panchnamas, arrest of the accused, collection of injury certificates, postmortem reports, sanction letters etc. were all done by him.

It is further deposed that he had only 30 days at his disposal when he took over the investigation, he has arrested A-18 to A-23 and Guddu wherein A-21 was absconding, the Tisra Kuva was dug up in view of the complaint and ultimately, he has filed charge-sheet on 04/06/2002.

(4) He has also stated to have arrested A-24, A-25 and A-28 to A-30 on different dates on 06/06/2002 and then he has filed the charge-sheet No.2 on 23/08/2002.

(5) It is further stated that on 26/09/2002, he has arrested A-38, since other complaints were merged into this main complaint, he has filed C-Summary reports (Exh.1776/1 to 1776/24).

(6) Exh.2131 to Exh.2163 are the Yadis of Civil Hospital which were given by the witness to the relatives or heirs of the

deceased victims of the riot, so as to enable them to have the postmortem of their deceased relative.

(7) The witness has also recorded statements of many of the PWs, he gave an account of the work of his assignee officer, deceased Shri A.A.Chauhan.

(8) The witness identifies A-18, A-20, A-24, A-25, A-38, A-19, A-21, A-22, A-30, A-23, A-29.

(9) The witness at para-82 has told that it is not true that the victims were questioned in presence of office bearer of N.G.O. and that the PWs were dictating the witness word to word.

At para-108, the part of the statement of the witness at SIT has been recorded wherein diar opposite version has been given by the witness.

(10) At para-113, the witness plead his ignorance about the place of video shooting of the site by the the previous I.O. He further goes to state that he has not obtained any VCD.

It is astonishing that at para-133 and 134, it is getting clear that in the muddamal article slip of this VCD, the signature of this witness is found and that the Court itself has seen VCD which was forming part of the muddamal record.

(11) In the opinion of this Court, the witness though does not speak lie atleast seems to have not done proper homework. As it may be, but the fact remains that these are related to

proprietary of the official act, hence there cannot be any doubt to such acts of the I.O.

(12) At para-114, which is a part of the statement of SIT, the witness has clearly put on record that there were persons of VHP, Bajrang Dal etc. amongst the miscreants and that he has arrested the workers of RSS, VHP and Bajrang Dal, during the interrogation, these facts have also been revealed.

(13) At para-130, the witness has been confronted on receipt of site maps etc., but when the two panchnamas of the site of the offence and when VCD of the site of the offence are on record, there is indeed no importance of site maps.

(14) As is clear at para-136, the names of the chawl have not been mentioned at the panchnama Exh.1749 (Part-I to IV), but the witness gives plausible explanation and clarifies that since after the occurrence, the people were not inhabiting at the chawls and since the chawls have reduced to ruins, it was not possible to know the names of the chawl.

(15) At para-141, the witness has been confronted for having not recorded statement of family members of A-24, and that seizure of his house was not taken and that no statement of any doctor was taken and no treatment papers were obtained, the witness denied to have such need.

In the opinion of this Court, how can it be expected from the I.O. to investigate about the state of the health of the accused when he was not provided with any material nor did it stood revealed before him. The witness plainly denies to have

received any such information. This point shall be elaborately discussed at the time of discussing the written submission and the documents produced by the accused.

(16) At para-142, the statement of the witness before the SIT has been referred saying that the contents in the interview at the Sting Operation could be for the sake of heroism, but this is not probable firstly for the reason the witness states at para-142 and secondly drawing the inferences is the domine of the Court and not of the investigating officer, hence is does not have any value whatsoever except the person is an expert on the subject, his opinion can hardly secure mileage.

(17) At para-152, the witness admits that before doing the process of C-Summary, he did study the record at the Court of Learned M.M.C. for the 27 complaints.

If alongwith this admission the discussion this Court did for the C-Summary at part-2 is perused, it is becoming more than clear that in fact this witness must not have read the record placed alongwith C-Summaries.

(18) At para-158, the witness admits that after the firing, the blank cartridge shall have to be deposited in the police department.

It is matter of hard reality that in this case, though PW- 274 claims to have done numerous firing, not a single blank cartridge has been deposited. Not only that, but even this witness has not inquired about depositing the blank cartridges. This shows vital lacuna in the investigation.

Moreover, according to the police officers, many persons had died at the site in the police firing, but in none of the case, any proceedings as required u/s.174 of Cr.P.C. for the accidental death has been done or the procedure of filing a complaint against the policeman who has fired or any inquiry has been carried out.

(19) At para-161 and 162, it is clarified that this witness did try to learn as to who had prepared the printed complaint etc., but in the investigation, the witness has learnt that the witnesses do not know the person.

(20) At para-302 onwards, the questions by the Court have been recorded. The witness has admitted that though about 86 persons had died till his investigation tenure, he sent yadis of only for 10 dead bodies.

Exh.1498 is the report of DNA analysis, the way in which the offence of mass murder was committed as was obvious, the DNA profile cannot match except for the exceptional circumstance. The document obtained is therefore, not linking with the charge.

(21) At para-304, the witness admits that the announcement were being made from mike. The statements of the PWs were only recorded whosoever comes in response to the said announcement. This shows the improper conduct of the investigation, the I.O. should have actually investigated about the number of the victims, the sufferers, the damages etc. and then he should have recorded the statements.

This goes with the admission this witness has made that he has not prepared a list of owner and the person in the possession as far as deserted damaged shops, dwelling houses and properties were concerned. If the list could have been prepared, all the real victims could have been benefited out of the investigation, but it has not been done.

(22) The witness admits that he has not verified the statements of the relatives of the deceased recorded by his assignee officer nor did he visit the camp to meet such person, this also shows ineptness of the investigation.

(23) The witness admits that he did not go to hospital to record the statement of any of the victims, this could have been done by the witness.

(24) In the opinion of this Court, no doubt whatsoever has been created in the mind of the Court about any of the procedure conducted in the investigation done by him or got it done through his assignee officers except the serious lacunas which this Court has already discussed and which are held to not prejudicing the interest of the accused.

FINDING OF I.O. NO.3, SHRI S.S.CHUDASAMA - PW- 307 AND HIS ASSIGNEE OFFICERS & OFFICIALS :

a) Through this witness, it stands established that the miscreants of the mob were workers of RSS, VHP and Bajrang Dal which supports the version of numerous victim PWs.

b) Through this witness, all the procedures like

discovery panchnamas, filing of two charge-sheet, arrest of many accused, the jobs done by assignee officers, the reports given by the assignee officer, the investigating carried out for Tisra Kuva, addition of S.376 of IPC etc. have been proved to have been properly done.

c) About the investigation done by this witness and the over all appreciation on the previous investigation has been discussed at Part-2 of the Judgement below the topic in addition to what is to be discussed at the end of appreciation of this group of the witnesses.

d) The points discussed at para-(20) to (23) hereinabove shows lack of skill and inept investigation by PW-307 and his team.

It needs to be recorded that according to the annexure tendered by the witness and annexed with testimony before the filing of the first charge-sheet, the witness himself and through his assignee officers has drawn 390 panchnamas and has recorded 621 statements. This Court is of the opinion that had there been necessary care taken by I.O. No.3 viz. PW-307, the investigation could have been far far better than what was done.

(e) Exh.2130 to Exh.2163 – yadis of Civil Hospital stands proved.

17. FOURTH I.O. - PW- 275 (MR.H.P.AGRAWAT) :

a) This witness was often holding charge of A.C.P. and

was many a time in-charge I.O., this witness has done the procedure of arrest and related procedures for A-25 to A-27, A-38, A-41 to A-44 which when some of the assignee officers has arrested the accused and has handed over the accused to this witness being in-charge I.O., the witness has done the procedure for the absconding accused as required u/s. 82 of Cr.P.C., drawn discovery panchnamas, received the accused by transfer warrants, sent the muddamal to FSL and did all other necessary formalities including writing the yadis at Exh.1835 to 1850 for 16 P.M.s, yadi to Executive Magistrate etc.

b) During the course of the cross-examination, the witness was confronted since some of the accused named by him were not identified by him, but then it is quite natural as the trial was proceeded after about 8 to 9 years and in any case, accused No.26 and 27 who were exempted, were exempted on the condition that they shall not raise dispute on their identity.

c) In the cross-examination, it is revealed that the witness has not produced log-book during the investigation and that he has procedure for discovery panchnama were doubtful, but for both these, there is presumption of proprietary except and unless the said presumption stands effectively rebut. It is held that the presumption has not been rebutted over hear.

d) The fact that the sword was discovered from the land of joint ownership of the accused with someone else and or the I.O. has not investigated about the titles of the land from where the sword was discovered is indeed not impressive. It is matter of common experience that the accused would have

tendency to get rid of proof after once the crime is committed, secondly, even if it is land of someone else or of joint ownership, it need not to be doubted since the tendency of the accused would always be to not take the liability and if possible to except from the criminal liability.

FINDING OF FOURTH I.O - PW- 275 (MR.H.P.AGRAWAT) :

a) The discovery panchnama of the accused at Exh.1834, 1494 have already been held credible one.

b) Exh.1835 to 1850 are all the 16 yadis for the issuance of postmortem to the relatives of the victims.

18. PW- 278, 279, 280, 281, 282, 283, 284, 291, 292 (discussed alongwith I.O.-2) 293, 295, 298, 299, 300, 301 AND 302 :

a) All the above referred assignee officers were working in the crime branch during 2002 and that all of them were assigned the job to assist PW- 307 for the investigation of this case and that all of them assisted PW- 307 according to his instructions and directions. The common points deposed by all the said assignee officers are mainly as under :

a-1) General :

The witness was posted at Crime Branch in the year 2002, was working according to the instruction of A.C.P., the statement of the victims were recorded, the panchnamas for the damages in the dwelling houses were drawn after going at the site and or doing necessary formalities as per oral or

written instruction of PW- 307, necessary reports were given to PW- 307.

a-2) Which tasks were assigned :

Drawing panchnama of damages, recording statement, visiting camps, effecting arrest, procedure for T.I.P., yadis for P.M.s, procedure for remand, drawing the panchnama of physical state, collecting samples for DNA profiles, yadi to CMO corresponding with FSL, transacting with FSL, giving written report to PW- 307 etc.

All the PWs have only referred the name of the witnesses who were examined by the prosecution, but over and above this, deposition of many of the PWs were recorded.

a-3) COMMON CROSS-EXAMINATION

1) All the witnesses were confronted who all have obviously given reply in affirmative that, “they were writing what were dictated by the witness, they did not leave anything, no self-styled insertions were made and did not write what was not dictated by the witness in the statements.”

Even if by way of all these suggestions the affirmation is not brought, then also, which police officer would admit to have not written as stated by the PW-. Therefore, the reply is sure and pure to be in affirmative which in light of the entirety of the facts and circumstances, the police officer hardly mean.

2) Another common question was related to a uniform mechanical sentence used by every police man at the end of every statement whether it was spoken by the witness or not and whether the investigation is of a small case or a contested case. That sentence is “whatever is stated is true and correct and as stated by me.”

This true and correct is such a favourite phrase of police that it has become trademark for every police man for any statement and it is to be written without even inquiry as to what the witness wish to say and whether the witness uses true and correct word or not. It is from this common experience, this Court has branded the sentence used in the SIT statements about “whatever is stated in the earlier statement is all true and correct” as uniform mechanical sentence. No reasonable person can ever perceive that every witness would speak same words as every police officer is using the same words. It is improbable and unnatural which is causing at times tremendous injustice to the witnesses.

3) In light of what is all discussed hereinabove and at Part-2 under the Chapter of previous investigation, the omission and contradiction from the statement of the year 2002, cannot be attached any value and that the said needs to be kept out of consideration in the interest of justice.

4) If the testimony of PW- 307 is perused, it stands revealed that I.O.-3 has not bothered to analyse and to enlist the defects from the investigation of the previous two IOs.

5) To ensure efficient and meaningful investigation, the

police commissioner has shifted the investigation from PI to ACP but as can be seen the investigation was even done by Head Constable.

"So many cooks spoil the food" is aptly applicable to this case, numerous assignees have made all the mash though there are many good points of this investigation also and the intention of the I.O. is not at all doubted, but in such cases what is important is always a result.

(b) OPINION :

1) PW- 278 has stated that he was never going inside the camp, but was sitting outside the camp and his subordinates would go inside the camp and would bring out the witness.

The witness deposes to have not seen any person taking down the complaints in the camp or noting down the information in the printed complaints.

2) PW- 307 was giving instruction in general to bring the statements but he was not naming the witnesses. (PW- 278)

3) PW- 279 states that he has never gone to see inside the camp. On the advertisement in the mike, whosoever comes to Patiya, they were taking that victim, what was the position inside the camp is not known to him. The PW- 307 was not instructing as to whose statements were to be recorded.

4) PW- 280 states at para-14 referring PW- 192 and in

general that the statements taken at that time, were of damages only. (This Court opines that this very much tallies with the testimony of numerous witnesses who were deposing again and again that police was telling them that at that time, they have to say only about damages and nothing beyond that. From this illustration, the Court reads truth in the version of the PW.)

This witness was inquired by the Court and it was revealed that wherever the dwelling houses of the witnesses were burnt, the statements were recorded in such house standing there itself (what a haphazard approach).

5) PW- 282 states that after going to the camp and on asking who were the victims, the victim used to come in front of him (this witness did not bother to coolly and calmly illicit the information from the victims)

Like many other assignee officers, this witness states that he did not take the complaint of the witness alone while went to record the statement. (The Court fails to understand how there can be perfection in his work)

6) PW- 283 has carelessly stated that no names of the accused stood revealed in the statement before him which he told to SIT. Now he explains that he said so to SIT because at that time, he did not have any record of his work.

7) PW- 293 clarifies that the writer of the SIT, Ashok must have mistakenly written. This shows the possibility of the uniform mechanical sentence in every statement of SIT to have

been written by the writer.

This witness clarifies a very vital factor that wherever in the statement, it is written about the mob of the miscreants, that the name of the miscreants is not known to witness, the same goes with the mob who has destroyed property of the witness.

8) PW- 295 states that I might have gone once to Patiya, statements were many, I might have taken statements at camp and panchnama might have been drawn at Patiya.

9) PW- 298 states that I used to record the statement whosoever comes in the queue. This shows that no revelation is received and the treatment to the victims of the crime was quite mechanical.

10) PW- 299 is a Head Constable, who has recorded the statement of PW- 37, he admits that statement was before him, written by him, but he has not read it to the witness (here it needs to be remembered that it is admitted position that barring 2 to 5, all the victims were not knowing Gujarati language whereas the statements are written in Gujarati. It was very much essential to read over and explain the statements in Hindi to the witnesses, but this has not been done).

11) PW- 300 has admitted even without reading the arrest memo of A-22 that, “it is true that he did not inform about the arrest of A-22 to his family members.”

Now, when this Court has taken out arrest memo of A-22 from the record of Sessions Case No.236/2009 brought from Court of Learned Metropolitan Magistrate, it could be perused that relative of the accused was informed, who was aunt of the accused name Shardaben Chetansingh and even her telephone number also written in the arrest memo.

From the above illustrations, this Court opines that PW- 307 had to take work from such careless, insensitive, unskilled assignee officers who even while stepping into witness box do not bother to speak after seeing the record. It is these lacunas which has gone in the route of the case generating all hue and cry against the previous investigation.

12) Many of the assignee officers have stated to have given written reports, the said ought to have been preserved and produced in the papers of investigation by PW- 307. It has not been done.

13) There are difference of opinion and observation about having not seen table, chair in the camp, having heard announcement in the camp etc. but, that is not indeed material.

Conclusion of PW- 278, 279, 280, 281, 282, 283, 284, 291, 292 (discussed alongwith I.O.-2) 293, 295, 298, 299, 300, 301 AND 302 :

a) It seems that all previous investigators were lacking sensitivity, were not entirely fair to the process, were seems to be over-powered by someone, were aimed to protect some person, were not quality conscious, but were harping upon the

quantity, at times were doing haphazard investigation, over distribution of work to many assignee officers has deshaped the investigation, they were “soft to loss of properties, but hard to vibrant human hearts”,they were lacking necessary care and seriousness which, such sensitive cases deserve.

b) To have a balanced view, it was thought over as to whether there are any good points of the I.O. No.1 to 3 because of which their entire action becomes without any malice and without any Muslim bias.

b-1) Shri K.K. Mysorewala has committed numerous errors and has proved to be a sluggish investigator who has lost golden opportunities of doing the investigation fresh and fast, but then this I.O. has taken care of taking the injured to the hospital, seeing to it that they are treated and even seeing to it that the dead body are taken away as quickly as possible from the site. He used his infrastructure and manpower correctly after about 07:00 p.m. or so.

b-2) I.O. No.2 has done video shooting of the site of the offence which became speaking evidence of the scene at site.

b-3) I.O. No.3 has dug up the Tisra Kuva upto 30 feet in the presence of head of fire brigade, another A.C.P., two P.I.s etc. and has ensured that there are no human remains or dead bodies thrown inside the well, this I.O. has tried his best to see to it that the relatives of the deceased get P.M. Notes to enable them securing compensation, this PW had a very little time of 30 to 34 days and still he tried his best to file the charge-sheet on time, this witness found out 51 missing persons, he himself

went to camp and has recorded statements of many, he investigated on the line as to workers of which organisations were involved in the crime, he tried for DNA test profile and attempted to secure even belated scientific investigation.

b-4) The three investigations were lacking consistency of the line of investigation and that since they must be busy with law and order problems, facing shortage of manpower and on account of too much rush of the work, the quality of the investigation has remained very poor as a result it cannot be held to be completely reliable or the faithful record of the investigation.

This Court is not at all ready to even remotely perceive that any of the three I.O. has falsely involved any of the accused. In fact, it can be said that they were lenient enough or say conscious enough to see that none of the accused should be put into fix box and should be involved by name, but they also had no bias for the Muslims and they also wanted that the Muslims should get compensation etc. Suffice it to say that though there is absolutely no chance of false involvement of any accused, there are number of lacunas, but it is held that none of it in any way is prejudicing the interest of the accused. The accused therefore cannot be held to be entitled to seek any benefit of doubt from the lacunas or drawbacks of the investigation, but at the same time, no implicit reliance can be placed on this investigation and more particularly the statements of the PW recorded, however whichever part of the investigation is found proper and appropriate, the said has been acted upon, meaning thereby, the Court has to do fine scrutiny of the record, but all the

previous investigation as far as the accused are concerned cannot be thrown away.

19. FIFTH I.O. - PW- 317 (Shri G.L. Singhal) :

(a) This witness is I.O. No.5 who has arrested A-39 and A-40 and has filed charge-sheet against one Shri Tejas Pathak and accused No.38 to 44. Certain statements were also recorded by this witness.

(b) The omission and contradiction as far as it is from the previous statement it is not found important that being part of previous investigation.

(c) No serious irregularities or point which doubts the proprietary of the official act done by this witness is highlighted. It is true that certain lacunas in the procedure were highlighted from the testimony of this witness but that hardly is affecting or is hardly prejudicing the interest of the accused, hence the said does not create any doubt in the mind of the Court.

(d) **FINDING OF FIFTH I.O.-PW- 317 (Shri G.L. Singhal) :**

(d-1) The witness has arrested A-39 and A-40 and has filed charge-sheet against Shri Tejas Pathak and A-38 to A-44.

(d-2) The witness did necessary formalities as required u/s.82 of Cr.P.C. for A-30.

20. SIXTH I.O. - PW- 313 (Shri Muliyana):

(a) This witness is the I.O. No.6, who was in charge of investigation from 15/12/2006 who then handed over the investigation to Shri V.V. Chaudhary (PW- 327).

(b) This witness has arrested A-33 and completed other formalities related to the remand of A-33. This witness has done necessary procedure for T,I. parade of A-33 through PW-200, an eye-witnesses. The TIP is at Exh.240 and it was before PW- 35. The TIP was successful. Necessary sanction for A-33 was obtained from Home Department by this witness who has also filed charge-sheet against A-33 and who has identified A-33.

(c) From the cross-examination there is nothing on record because of which the procedure adopted can be doubted. It is true that as has already been discussed there were certain lacunas in the investigation but since the same is not prejudicing the interest of the A-33, it does not affect the procedure.

The witness has been cross-examined on the aspect that in T.I. Parade Exh.240 there are certain words spoken by the accused, but since the witness is unaware and does not remember the same, there is nothing on record. It is true that the witness has not drawn identification panchnama or the panchnama of the arrest of the accused but the said being a lacuna like irregularity does not affect the proprietary of the official act.

(d) **FINDING OF SIXTH I.O. - PW- 313 (Shri Muliyana):**

This witness has arrested and filed charge-sheet against A-33.

21. SEVENTH I.O. - (Shri Ambaliyar) :

Mr. Ambaliyar is the last I.O. of Crime Branch from 21/11/2007 to 10/04/2008. He has not been examined since, he has not contributed to the investigation.

22. EIGHTH I.O. - PW- 327 OF THE SIT :

(1) The witness is the first I.O. of the Special Investigation Team, constituted under the Order of Hon'ble Supreme Court of India as stands revealed the witness testifies that the SIT has involved 24 accused during its investigation whose names have been shown at the statement, Exh.2349 annexed with the testimony of the witness.

(2) During the investigation of SIT, four different charge-sheets came to be filed as deposed.

The SIT has recorded the statement of about 153 witnesses as has been enlisted at the list Exh.2340 annexed with the testimony.

According to the PW, in all, about 95 persons had died (including missing persons) whose names have been enlisted at annexure, Exh. 2351.

(3) The witness testifies that he was handed over the investigation by Shri H.R.Muliyana of the Crime Branch, the SIT has done further investigation. There are in all 27 complaints, the witness has issued different yadis, the SIT has received 66 different applications from the victims, SIT has written letter to Akashwani, had sent the samples to FSL, has received the FSL opinion, has written letter to IOC, received the reply for the same, the correspondence was also entered into with Chief Fire Officer, he also wrote a letter to V.S. Hospital to bring on record as any bullets were recovered from the victims who were injured in the fire arm injury, he produced on record the letters and proceedings of SIT, the appointment letter of investigation officer No.9 of the case who is the second I.O. of SIT, collected all different materials, verified the record of the previous investigators, recorded the statement of the victims, carried out T.I.Parade and thus has completed the further investigation of the offences.

(4) At para-13, the witness testifies that during the course of his investigation, it came to his notice that the revelation made by different victims from the Relief Camp has not been investigated into and that the names of the suspects given in the said application has not been attended to.

(5) This witness has identified all 24 accused arrested by him except A-31, A-51 and A-55. The inability of the witness to identify three accused hardly goes against the witness.

(6) The witness was cross examined wherein the lacunas of the previous investigation, the facts related to T.I. Parade have been highlighted. The cross-examination on

topography has been done, but the replies of topography are related to the position of the year 2008.

Certain documents have also been secured during the cross-examination like the fax message received by the witness of Exh.2330 to join at SIT. The notification of SIT Exh.2332, the suggestion of SIT as guideline for investigation by the SIT at Exh.2331. The SIT charge-sheet at Exh.2333 and 2334, the burial receipt of Kausharbanu at Exh.2341, the file of the resident phone connection of A-24 at Exh.2342, the files of the BSNL for the resident phone connection of A-38 at Exh. 2343, the photographs of different Muslim chawls and Nurani at Exh.2344 (photographs of the year 2008), the different burial receipts revealing to have buried different deceased at Exh.2352 to 2361, the letter Exh.2362 to Shri Gedam for the mobile, I-C.R.No. 177/02 at Exh.2363 and the summons issued to A-47 etc.

(7) The witness admits that he has seen the papers of the previous investigation and has learnt about the lacunas left out and that he has also studied the affidavit filed by some of the witnesses before Hon'ble Supreme Court of India.

The witness denies the suggestion that he went to Hon'ble Supreme Court to collect the affidavits filed by the PW of the case. The reply of the question, creates a question as to whether the said affidavits were produced before Hon'ble Supreme Court of India or not. The reply is not on record.

From para-18 onwards, the omissions and contradictions etc. have been recorded, the effects of the said if

any, has already been discussed while discussing the appreciation of the evidence of the respective PW.

(8) The contradiction and omissions from the Sting Operation and PW- 322 have been attempted to be highlighted, but all the omissions related to any other person on whom the Sting Operation was shot is not relevant except the three accused and hence the same need not be discussed. Moreover, when the DVD and CD are itself on record, such omissions and contradictions loses significance. The witness agrees that conversation of the PW- 322 with the three accused is included in his statement before SIT. The admissions from para-747 onwards shows that A-18 has given challenge at Godhra itself to kill four times more Muslim at Patiya when he saw dead bodies at Godhra, A-18 has collected about 23 revolvers by threatening several Hindus who were possessing fire arms. The team of about 29 to 30 persons was collected by A-18, he reached to the persons who had fire arms, A-18 has stated that there was a big pitfall wherein the Muslims went to hide and that they have cordoned them all, the police was standing and watching everything, but the police has kept its eyes and mouth shut, had the police desired, they would not have been able to enter into the area and the police could have stopped them, an entire diesel tanker was dashed at Nurani Masjid.

(9) A-21 has stated that A-37 was very much there at the site. Had there not been *chaaras*, nobody would have been able to get inside the area (Muslim area)

A-22 has told to Tehleka that A-37 was there through out the day, she (A-37) was encouraging and provoking, even

the police was in their favour, even the police killed many in firing, A-44 was also there, torching of people started. He adds that, they have burnt a tanker full of inflammable and was used to burn the Masjid. A-22 admits to have committed rape on one girl Nasimo, different questions to challenge the veracity of recorded CD of the interview etc. are found to be incapable to create any reasonable doubt in the mind of the Court as CD itself is an electronic document, the certificate of its genuinity is on record.

(10) This Court is of the opinion that the documentary evidence of the record filed alongwith C-Summary on record at Exh.1776/1 to 1776/24 have not been collected by SIT. Some of the documents from this record are on record either as statement of the witnesses, or as complaints, but this record pertains many more documents which should have been collected by SIT.

As far as the sanction obtained from the Home Department is concerned, there is no uniformity for the sections under which the sanction has been sought for. On scrutiny of the record, during the tenure of SIT, the sanction was sought for other offences over and above Section 153A of IPC.

(11) In nutshell, no substantial challenge seems to have been made to I.O. of SIT. The I.O. of SIT is indeed the only I.O. on whom reliance can be placed, however in case of SIT, the use of uniform sentence written in mechanical manner in all the statements is the black dot and that noting the limitations the SIT was facing, the investigation to a large extent is

unveiling the truth. The PW is credible. The official acts performed by him during his investigation enjoys presumption of proprietary which has not been rebutted.

23. NINTH I.O. AND THE CURRENT I.O. OF SIT :

The ninth and the last I.O. is the second I.O. of SIT Mr. Himanshu Shukla who was also not examined by the prosecution.

24. FINAL CONCLUSION :

Except for the investigation of SIT for all the previous investigation the final finding needs to be borne in mind which is at Part-2 of the judgment under the heading of 'Appreciation of the previous investigation in general'. For ready reference the said findings are reproduced as under :

FINDINGS UNDER THE HEADING OF 'APPRECIATION OF THE PREVIOUS INVESTIGATION IN GENERAL'. :

(a) The statements of witnesses recorded by the previous investigators are held to be unreliable as the presumption of the proprietary of this part of the official act of the previous investigator is held to have been rebutted.

(b) In a case the accused is involved in the crime solely on the testimony of the police eyewitness then such an accused shall be granted benefit of doubt.

(c) All the official acts mentioned at para 2(c) hereinabove enjoys presumption of proprietary until rebutted.

FINAL CONCLUSION OF PART - 6 :

Following persons have been proved to have been died in the occurrence in homicidal death which stand proved through different PWs beyond reasonable doubt.

Sr. No.	Name of the deceased	Proved by which PW
1	Salimabanu Kasamali Saiyad (wife of PW- 74) (who was lame and one eyed)	PW- 74
2	Sarmuddin Shaikh (father of PW- 78)	PW- 78
3	Sufiya Begam Abdul Rahim Luhari (wife of PW- 92)	PW- 92
4	Reshmabanu (daughter of PW- 93)	PW- 93
5	Mohsin Mebha Hussain Munir Ahmed Shaikh (son of PW- 111)	PW- 111
6	Fatima, mother-in-law of PW- 151	PW- 151
7	Firoz, Son of PW- 151	PW- 151
8	Nilofar, daughter of PW- 153	PW- 153
9	Shabnambanu, wife of PW- 240	PW- 240

FINAL CONCLUSION FOR TOTAL DEATH TOLL :

Many occurrence witnesses have testified about the death of their family members in the occurrence to have been

witnessed by them.

Since, the occurrence took place before about 8 years and since the family members and close relatives of the deceased have neither heard nor seen the said lost, unfound or missing family members from the date of occurrence till the date, this Court has presumed death of many such deceased as has already been discussed.

Moreover, PW-327 the I.O. of the SIT has also placed on record the list Exh.2351 showing the names of deceased who are 95 in number. This also supports the finding of the Court of 96 persons having died in the occurrence.

About 68 postmortem notes of unknown dead bodies are on record which postmortem notes have been validly proved by the doctors who have performed the postmortem. All these dead bodies were sent for the postmortem from Naroda Police Station. The postmortem concerning to another case of Naroda Gam were taken for the record of this case. It is therefore clear that the postmortem notes lying in the record of this case is nothing but proving the death of deceased in the occurrence at Naroda Patiya on that date. Upon perusal of the postmortem note on record, it is clear that the deceased had died on account of severe burns injuries and the results thereof. It is therefore clear that all the 68 deceased had also died the homicidal death whose P.M. are supporting the fact of their homicidal death in the occurrence. In the previous part, the death of 28 deceased have been held to have been proved, thus in all the homicidal death of 96 persons stands proved beyond all reasonable doubt.

The death of all the persons stands proved to have been occurred in the communal riot at Naroda Patiya on 28/02/2002 which also supports the prosecution case. Appreciating all the discussion in all the Parts of this Judgement, it stands proved beyond reasonable doubt that 96 persons had died in this communal riot at Naroda Patiya, all of whom were Muslims, most of them were residing in the Muslim chawls and they died homicidal death since were burnt alive or severely injured and killed on the date, time and place of the occurrence.

==X==X==X==X==X==

~:: PART - 7 ::~

CHAPTER-I: (A)THE POINTS OF DETERMINATION RAISED AT PART - I:

I-A. Point Of Determination No.1 :

Ques. **Whether the Prosecution proves beyond reasonable doubt that, on the date, time and place of the offence and in the facts and circumstances of this case, any criminal conspiracy has been hatched by the accused (Part-1) and whether any offences were committed in consequence of abetment and/or instigation and/or in pursuance of the conspiracy hatched by the accused or not? (Part-2)**

If yes, when the conspiracy was hatched, the offences mentioned in this point for determination were committed by which of the accused? (Part-3)

(With reference to Sec.-120-B of I.P.C. and for the offences committed R/w it.)

I-B. DISCUSSION ON POINT OF DETERMINATION NO.1 (For I.P.C.Sec.-120-B and offences R/w. it):

(a) This point of determination is related to conspiracy which has been discussed on merits at Part-3 of this judgement. It has been proved on record by oral evidence of numerous victim witnesses and by occurrence witnesses that the proved charged offences were committed throughout the day and the initiation of commission of offences was somewhere from about 9:30 a.m. 10:00 a.m. on 28/02/2002. The offences continued upto atleast 8:00 p.m. It is proved fact that accused No.1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, ,44, 45, 46, 47, 52, 55, 58, 62, (live 26) deceased Guddu, Jay Bhawani, Dalpat, Jashvant, Ramesh and A-35 have all, assembled under the active leadership of A-37 near the Muslim chawls viz. S.T. workshop and the religious place of Muslims viz. Nurani Masjid (27 alive accused and 6 deceased who were 33 in number) in the morning of 28/02/2002. The riotous activities were mainly done at Muslim chawls opposite Nurani, behind Nurani and at Nurani. This proves date, time and site of the offences for all the points of determination.

(b) The classification of the morning occurrences, noon occurrences and evening occurrences from the proved fact is done herein before for easy and just conclusion. With the said analysis the judicial soul is satisfied that all the proved charged offences against human body (except rape and gang rape), offences against public tranquility, offences against property, etc. were committed in the morning, in the noon and in the evening with same modus operandi, using the same means, with the same criminal force and to bring the similar results. Except that the offence of rape and gang rape on Muslim women committed only in the evening and offence relating to religion, etc. committed only in the morning all other proved offences were committed in all the three occurrences.

(c) About 81 victim witnesses and about 52 occurrence witnesses thus, in all, about 133 different witnesses have witnessed the morning occurrences from different points. The morning occurrences are of having given slogans by the majority which were provoking, disturbing harmony of the two communities as were against the minority. The accused uttered slogans of 'kill – cut', 'burn the miyas', 'not a single miya should now live', 'rob the miyas', 'go to Pakistan', etc.

(d) Several murders like the murder of Hassan Ali Mirza i.e. brother of PW-135 caused at Hussain Nagar, burning alive the mother of PW-259, stone pelting, throwing burning rags were committed by the miscreants of the Hindu mobs in the morning at the site of Nurani Masjid, outside of the masjid, near S.T. Workshop and at the Muslim chawls. The occurrences of police firing took place in the morning, the proved fact reveals, the occurrences of private firing, torching shops, carts, cabins and

dwelling houses of Muslims around Nurani and at Muslim Chawls, attack including burning Nurani Masjid by throwing two carts of kerosene, dashing tanker of diesel on Nurani, bursting gas cylinder inside Nurani, breaking minarets of Nurani etc. were all morning occurrences. For these occurrences, the unlawful assembly of morning is to be punished.

(e) The presence of the accused with the weapons, severe damages, ransacking, arsoning, robbing, burning etc. of households and other materials like T.V., embroidery machines, sewing machines, clothes, cupboards, vehicles, furniture, tap recorders, fridge, washing machines, vessels, gas stoves, gas cylinders, mattresses, bed rolls, grocery, ornaments, cash, etc. prove offences against property throughout the day in all the occurrences. About 68 PWs from different chapters and about 25 PWs from the chapter of occurrence witnesses, in all about 93 PWs have testified on damages. Panchnama of damages and other documents are on record. For these offences, every member of the unlawful assembly is responsible whether was present and has participated in the morning, noon and or evening as these offences took place in all the three occurrences hence, none of the member of unlawful assembly is such who did not remain present and did not participate in the offences committed by the assembly of mischief etc.

(f) As has been discussed at length under the topic of 'Maps of the site of the offence, VCD of the site of the offence', it stands revealed as has been discussed at Part-2 of the judgment under Chapter-2 of Maps etc. that on that day, in all about 222 different properties including 134 dwelling houses,

shops, etc. and 88 different properties have been burnt, destroyed, damaged and/or ransacked at the site. Out of these about 222 properties were only of the Muslim chawls situated opposite Nurani over and above, many vehicles, household properties, dwelling houses which were burnt to ashes. These figure shows huge amount of damages in all the three occurrences to have been sustained by the victims. This establishes offences against property throughout the day to have been committed hence, that part of the charge stands proved against all the members of unlawful assembly as none of the members of unlawful assembly whether of morning, noon or evening occurrence is such who did not participate in any one of the occurrence of causing mischief, damages etc.

(g) Moreover, the injury to have also been sustained to the members of the minority community in the morning which was right from simple hurt to grievous hurt which can be held to be attempt to commit murder. The death to have been occurred in the morning by use of blunt weapons and thereby, injuring like one deceased Mr. Mohammad Shafiq and then after, killing him by bullet injury, burning the dwelling houses wherein victims like Shakina Babubhai, Razzak etc. were grievously hurt and attempted to murder who ultimately succumbed to the injuries, since was hurt while being inside the burning houses. This was clearly attempt to murder as provided u/s.307 of I.P.C.

(g-1) In the noon, murders of Moiyuddin, son of Mullaji, Aiyub, lame wife of PW-74, parent of PW-65 etc. had been committed. The Jawan nagar wall was broken, numerous persons were attempted to be murdered, grievous hurt, simple injuries were also caused to the victims there and damages in

the dwelling houses of Muslims also caused.

(g-2) In the evening, murders, of Kausharbanu, Sharif, Siddique, Nasim and of 13 Muslims were witnessed by PW-158, 6 murders proved by PW-198, murder of family members of PW-156, torching houses of Muslims, attempts to murder all those who were admitted in the hospital, clearly stand proved. The offence u/s.302, 307, 323 to 326 etc. were committed even in the evening occurrences like those offences were committed in the morning and noon.

(h) Putting all the above and what has been discussed in the previous parts of this judgment together then, it is proved beyond all reasonable doubts that, the accused who were identified by different victim witnesses had assembled near the Nurani Masjid and near the Muslim chawls, they were possessing deadly weapons, shouting provoking and exciting slogans etc. at about 9:00 a.m. to 9:30 or 10:00 a.m. of 28/02/2002 which all, continued for the whole day.

(i) The common time at which all the accused had assembled is proving an agreement to have already been arrived at among the accused before meeting there. Had there not been agreement, all the accused would not have attended the place at the fixed time in the range of an hour or so. This conduct is a strong circumstance suggesting existence of conspiracy among the accused - agreement to do illegal acts.

(j) As has been testified by many of the eyewitnesses, the accused were armed with deadly weapons with them inclusive of inflammable substances, stones, swords, tridents, iron pipes,

fire arms, containers of inflammable substances, burning rags, spears, sticks, hockeys, etc. These preparation of the accused is clearly linking them with their preconsert or premeditation to have been successfully attained among the accused as, had there not been agreement, premeditation or preconsert, before they met at the site, the accused ought not to have come at the site with the possession of deadly weapons and by shouting provoking and exciting slogans against the minority.

(k) The possession of deadly weapons is suggestive of preparation by the accused which is even overt act. This is not possible without arriving at agreement among them to commit illegal acts. It is matter of common experience that without any cause, nobody comes out of the house, keeping deadly weapon in one's hands knowing that it is prohibited act and still, the accused came at the site alongwith deadly weapons, speaks about their oneness, their commitment and their dedication to the common intentions and objects they were sharing in common.

The similar acts of all the accused of while coming at the same site, at the same place, with the similar exciting slogans, with deadly weapons and then, doing similar offences as designed, are very clearly and undoubtedly establishing commonness in the intentions they all have perceived and this confirms the agreement beyond any doubt.

(l) The above discussion shows that different charged offences which have been proved to have been committed in the morning occurrences were committed with common intentions, objects and were based on the agreement the

accused have arrived at. The presence of all these mentioned accused is clearly proving their oneness.

(m) The presence and participation of A-21 has also been inferred by this Court which is found to be quite trustworthy, basing upon the proved, voluntary, free and lawfully acceptable extra judicial confession of the A-21. As has been discussed in the chapter of Sting Operation, revelation of A-21 is to the effect that though many gas cylinders were bursted, the mosque was not much shaken. The fact has been undoubtedly proved that the attack or the assault on Nurani was only once on 28/02/2002 and that was at morning after A-37 came at the site. The revelation and the expression of A-21 in the sting shows that he does not give hearsay account, but he speaks from his personal knowledge which shows that he was himself present at the site of Nurani and nearby in the morning. It is therefore, clear that over and above the accused mentioned and identified, A-21 was also present at the site right from the morning itself. A-21 is inferred to be one of the conspirators basing upon relevant substantial oral evidence like of PW-322 and circumstantial evidence. The aid then is called upon from sting operation. Moreover, his confession is, 'he cuts off hands and legs of the victims who were escaping from the Muslim Chawls'. A-21 confessed that he was outside the Muslim Chawls and has cut off legs and hands of Muslims. This goes with his agreement to do illegal acts with the remaining co-conspirators who were inside the Muslim Chawls. This combination of commission of the offences viz. overt acts inside the Muslim Chawls and outside the Muslim Chawls, leads to only one inescapable conclusion that, A-21 is one of the conspirators and was working as per common design in

pursuance of the pre-concert and the conspiracy hatched with his co-accused. Even his knowledge about the plight of the victim, inside the Muslim Chawls without going inside, the chawls and his counter role outside the chawls are also undoubtedly proving the criminal conspiracy having been hatched where A-21 was also a conspirator. His presence at the site stands proved by his extra judicial confession where he confesses his overt act. There is no reason to doubt the extra judicial confession when he himself is maker of it.

(m-1) The offences of attacking in the Muslim Chawls took place throughout the day in all the three occurrences and when A-21 is inferred to be one of the conspirator, his abetment, instigation and overt act in pursuance of conspiracy stands proved. It is needless to express that the prosecution could not examine any eyewitness qua the role of A-21 but that does not diminished the importance of the PW like PW-322, F.S.L. Scientist, official of All India Radio and even extra judicial confession of A-21 himself. It is scientifically proved to have been recorded in his voice without any tampering. The reliance on the extra judicial confession qua the accused himself and not qua the co-accused he involves are on different footing. No doubt is created about truthfulness, genuineness and voluntariness about the said. It can safely be acted upon when not a single defence is raised or put up against the sting and it is almost unchallenged as far as A-21 is concerned.

(m-2) Extra judicial confession in this case possesses a high probative value as it emanates from the person who commits a crime and that as discussed at the Chapter of Sting Operation, it is free from every doubt. PW-322 before whom the

confession was given by A-18, 21 and 22 is an independent and disinterested witness who bore no eminence against any of the accused. This extra judicial confession, in case of all the three accused is relevant and admissible in law under Sec.24 of the Indian Evidence Act. Law does not require that the evidence of an extra judicial confession should in all cases be corroborated. In the instant case, PW-322 is not a person in Governmental authority or in any manner an authority. There is no ambiguity in the version given. As emerges on record, more particularly from the oral evidence of PW-322, he has developed cordial relationship with the accused. Not only that, but he has also established link with the accused creating the base of institutional organization and he has projected himself to be a dedicated worker of Hindu Organization. The Hindutva in the three accused has been linked by PW-322 with his identity which he has assumed for the purpose of recording the sting operation. It is this identity and cordial relationship has created tremendous high level of faith and confidence in the mind of the accused where they felt that PW-322 is their own person and their interest is same. The extra judicial confession of all the three accused does not lack plausibility and inspires confidence of the Court. This Court is therefore, of the opinion that though extra judicial confession in the very nature of things is a weak piece of evidence, but in the instant case, in a very peculiar facts and circumstances, this extra judicial confession needs absolutely no corroboration as far as A-18, A-21 and A-22 are concerned being maker of confessional statement. It stands proved with the substantial evidence of PW-322, the C.D., V.C.D. and the oral evidence of F.S.L. scientist, etc. Hence, this extra judicial confession considering the foregoing discussion on its own merits is found very

dependable, reliable, having the contents full of probability and that it is absolutely found safe to convict the accused on this extra judicial confession.

(m-3) Hence, he is liable for all the offences committed during the entire day while reading it with Sec.120-B. His overt acts clearly proves that having hatched the conspiracy, he then became member of unlawful assembly right in the morning itself when attack on Nurani and Muslim chawls were started knowing it to be unlawful to execute the conspiracy. Presence of A-21 in the morning occurrence stands proved. He shared at that time the common objects of unlawful assembly. The attacks and assaults were in the Muslim chawls right from 10:00 a.m. to evening about 6:00 p.m. The knowledge of attack on Nurani proves his presence in the morning and his participation in the attack at Muslim chawls proves his presence in the noon and evening, His revelation shows his admiration for patronage of A-18 and acceptance of heroism of A-22. All his acts need to be accordingly read and held in the line of principal offender, he is liable for offences committed to be read with Sec.120-B of the I.P.C. He shall also be held liable for the offences committed while he was present and when he has participated as member of unlawful assembly to read it with S.149.

(n) The presence of A-37 has been now, a proved fact. A-37 was admittedly M.L.A. of the Naroda constituency then, complaint Exh.1773 as has been discussed in Part-3, is contending about provocation of the B.J.P. Leaders etc. A-37 was the M.L.A. of B.J.P. then, the presence of M.P. of the area or of some minister of any of the Government, is case of none. In

these circumstances, it is crystal clear that the leading personality of B.J.P. was only A-37. It has come up on the record as an accepted fact by the defence that, A-2, A-20, A-38 and A-41 (who all are Sindhis) were canvassers, propagators and election workers of A-37. It has also now an accepted fact by the defence that office of A-44 was very much situated on the site, was used as Election Office of B.J.P. Candidates. In addition to A-37, A-44, A-2, A-20, A-38, A-41 and A-18, etc. have been identified as workers and leaders of B.J.P., R.S.S., Bajrang Dal, V.H.P., etc. A-18 has proved to be a very active worker of Vishwa Hindu Parishad then. It is admitted position that it is V.H.P. which gave the call for **'Gujarat Bandh'** for 28/02/2002 to oppose the Godhra Train Carnage which took place on 27/02/2002.

(o) In extra judicial confession, A-18 has confessed to have decided, while his visit at Godhra and after having seen corpses at Godhra, that he would show the result on the next date viz. 28/02/2002 at Naroda Patiya by raising the death toll for about 4 times more in comparison to Godhra carnage. He confessed to have collected 23 firearms for the offences to be committed on 28/02/2002 as preparation and to have prepared the team of about 29 to 30 persons, both to have been done during the intervening night of 27/02/2002 and 28/02/2002. As is clear on the record that, about 33 accused including the deceased accused were assembled at the site in the morning of 28/02/2002 when A-37 came. The confession of the sting operation of A-18, tallies with the number of miscreants conspirators assembled, at the site, their possession and use of weapons, fire arms and the offences committed during entire day to rise the death toll of Muslim so many time more than the

death toll of Hindus in Godhra supports the conclusion of hatching of criminal conspiracy among the accused. The occurrences spread during the entire day were totally linked with the criminal conspiracy hatched amongst the 33 accused.

(p) It is well known that conspiracy is hatched in secrecy and direct evidence is seldom available. It is quite natural that direct evidence of the agreement to do illegal acts would not be available. In the facts of the case, it is inferred from the proved facts and circumstances as permissible in law.

(q) It is true that the prosecution has not proved the connection of mobile phone calls in the conspiracy hatched but, that does not mean that it also proves that the accused conspirators had no *inter se* communication with one another. It is an admitted position that they all were workers of B.J.P., V.H.P., R.S.S., etc. There affiliation, intimacy and relationship with one another is inferred as their organizational belonging is common. It has also been proved on record that all of them had common intentions and objects which stands proved from their working pattern, their time of assembling, their choice of site of offence to be Nurani and Muslim chawls, their modus, their weapons and their overall conduct. This Court therefore, inferred that, through any means of communication including their phones, no matter what was the phone number but, the accused had contacted each other anytime after the visit of A-18 at the site of Godhra Carnage on 27/02/2002 anytime before the morning meeting of the accused at site on 28/02/2002.

(r) This Court firmly believes that, the large scaled commission of offences by the accused on that day, the

exhibition and use of weapons, preparations made by all of them, the conduct of the accused before the occurrence, during the occurrence and after the occurrence, are all speaking evidences of the criminal conspiracy having been hatched amongst all of them.

(s) It is proved beyond all reasonable doubt that, A-37, A-18, A-44, A-41, A-2, A-20, Guddu, his brothers A-1, A-10, Bhawani were leaders and, A-22, A-26, etc. were present at the site with preparation and on account of the conspiracy hatched. In fact, they were well known leaders of the area, as proved beyond reasonable doubt, when about 24 reliable PW saw **A-22**, about 12 reliable PW saw **A-26**, about 11 reliable PW saw **A-37**, about 15 reliable PW saw **A-41**, about 23 reliable PW saw **A-44**, about 26 reliable PW saw **Guddu**, about 17 reliable PW saw **Bhawani** and even A-1, A-10, A-18 and A-20 were also seen by numerous witnesses.

This presence of all the accused, as discussed, shows the agreement to do illegal acts amongst the accused which is strengthening on the proved fact that they assembled at the site at the same time in same spirit only because of the conspiracy hatched. This was the first overt act the conspirator did in the proof of their pre-concert, agreement or pre-meditation.

(t) Oral, documentary and circumstantial evidences available on record proves existence of criminal conspiracy amongst the accused beyond all reasonable doubts under active leadership of A-37, who is obviously a kingpin and where main actors were A-18, A-41, A-2, A-20, A-44, etc. It was under full-fledged

involvement of all those accused whose presence and participation in the morning occurrences, stood proved beyond all reasonable doubts like A-22, A-26, Bhawani, Guddu etc.

(u) The previous conduct of all the accused to have possessed deadly weapon, their provocation and excitement while reaching at the site, their giving exciting slogan shouting, their conduct of reaching at the site between 9:00 a.m. to 9:30 or 10:00 a.m., their selection of site of religious place of Muslims and the chawls dominated by Muslim inhabitants, are all, proving their overt acts. The overt acts of A-37 were to come at the site on time, to provoke and instigate the co-conspirators by lecture and by presence to form unlawful assembly and to instigate to beat and kill Muslim, to attack on Nurani and to demolish dwelling houses of Muslims and settle an account with Muslims as proved by atleast more than ten to eleven eyewitnesses. This gets strength from the circumstance to have given false explanation. A-37 is proved to have taken round on the site during the entire day to back up the co-conspirators by ensuring her backing and to continue the riot etc.

Obviously these are the acts besides the agreement done in pursuance to the agreement amongst the accused which all gets proved by the oral evidence of the PW and clearly supported by the sting operation viz. confession of the co-conspirators.

(v) Moreover, the conduct of committing and participating in different offences against Muslims, while being at the site, which were offences against public tranquility, human body, property, relating to religion, etc. are the proved facts to have

been committed by the co-conspirators. These proved facts, inclusive of oral, documentary and circumstantial evidence, built up an unbreakable chain, tightened by the extra judicial confession and identification of the accused by different eyewitnesses, proving presence and involvement of the accused by the victims. This proves hatching of criminal conspiracy by the accused, beyond all reasonable doubts.

(w) It is worthy to be noted that the conduct of accused before coming to the site, while coming at the site, after coming at the site, are clearly revealing their agreement, their preconcert, their premeditation to commit illegal acts. The way in which different offences of I.P.C. have been committed on that day, the way in which law was broken, the way in which the Muslims were done to death wantonly, the way in which different proved charged offences were committed at the site, it is getting proved beyond all reasonable doubts, that the agreement arrived at amongst the accused was of nothing but, to do illegal acts. In pursuance to the said agreement, all the accused, in fact, did overt acts.

(x) It is obvious that for such commission of offences, direct evidence is seldom available. However, the trustworthy chain of circumstances, oral evidences the documents and even the corroboration from confessions of co-accused A-18, 21 and of A-22, bring home the charge of conspiracy having been hatched by the accused and the co-accused as, all necessary ingredients of Sec.120-A and 120-B of I.P.C. stands proved beyond all reasonable doubt in the acts and omissions committed by the accused present at the site in the morning.

It is needless to add that, the offences for which criminal conspiracy was hatched were not punishable for a term of 2 years hence, no formality of sanction is needed.

It is notable that the offences committed were such for which no express provision is made for the conspiracy to commit such offences.

(y) In these circumstances, Sec.120-B of the I.P.C. requires that the offender shall be punished in the same manner as if they have abetted the offences committed.

In light of Sec.109 of I.P.C. as discussed herein above, presence of abettor accused is not necessary hence, whether the presence of all the above referred accused including A-37 has been proved at the site or not is indeed not material since hatching of criminal conspiracy among the accused and their overt acts stands proved including commission of the proved charged offences in pursuance of the conspiracy.

It is therefore, held that, all the conspirators accused, referred herein below, shall be held liable for having instigated and abetted the other accused and one another to commit the charged offences. A-37 and other leaders have actively stimulated the co-conspirators to commit the charged offences.

All the accused can be inferred to have been knowing the probable consequences of their abetment and their acting in pursuance of the conspiracy.

(z) Many of the conspirators have also committed the

offences abetted by remaining present at the site and by actively involving themselves in executing the conspiracy hatched and thus have also committed the offences abetted, hence all such conspirators shall be liable for commission of offence u/s. 120-B and the same punishment which may be inflicted to the principal offenders for committing other offences shall also be imposed on the accused while reading the offences with Sec. 149 of I.P.C. and even r/w. Sec.120-B.

In the sting operation, A-18, A-21 and A-22 confessed about a common point that A-37 was present at the site, she backed up, encouraged the accused, provided them mental strength to continue violence, provoked and instigated the co-accused. She has praised their commission of offences when the co-conspirator and the co-accused were committing the offences, A-37 came many times, met the co-accused, she took rounds at the site in her car etc. She also said that, “Continue, I am at your back and shall remain at your back”. In her speech, she instigated to kill Muslims, to destroy Masjid etc. as discussed in the chapter of Sting Operation and conspiracy. These all is nothing but, instigation and acting in pursuance of the conspiracy by A-37, hence it is held that she has abetted the offences committed and has acted in pursuance of the conspiracy. She is therefore, needed to be held guilty as an abettor.

(aa) As has been discussed, instigation when provided by any of the co-conspirator and when the offences were committed in pursuance of the conspiracy, it is said to have been abetted by the accused. It is now, a proved fact that, A-37 came at the site, she has instigated and provoked the miscreants of the Hindu

mobs there. As has been discussed in Part-3 where conspiracy has been discussed and decided, the entire scenario was a result of instigation, provocation, abetment of A-37, A-18 etc. to the mob and that the preparation of the accused, the arrival of the accused at the site and their commission of offences were all, in pursuance of the conspiracy arrived at amongst the accused.

No doubt is left out to conclude that A-37 instigated and abetted the formation of unlawful assembly and commission of all the proved charged crimes which all, were done in pursuance of the conspiracy hatched.

(ab) The place, time, conduct of the accused are all very clearly proving the fact that all the proved charged offences were undoubtedly committed in pursuance of the conspiracy hatched amongst the accused. The abetment by A-37 and other accused to the commission of the offences stands proved beyond all reasonable doubts as, it is proved that A-37 and other leaders have instigated the mob of miscreants at the site. It is also proved that the offences abetted were committed in consequence of the abetment, by instigation and by acting in pursuance of the conspiracy hatched. The presence of abettor is hence not necessary. The meeting of the accused with preparation, excitement and commitment at the site was on account of the agreement to do illegal acts already arrived at amongst the accused any time prior to their gathering at Nurani Masjid on 28/02/2002 and at any time after the occurrence of Godhra Carnage on 27/02/2002.

From all the above discussion, it is held to have been

proved beyond all reasonable doubt that all these who have assembled in the morning on the date, time and site of the occurrence, are all the conspirators of the criminal conspiracy, who had agreed to do illegal acts like to strike terror amongst Muslims, to kill many time more Muslims than the Hindus were killed at Godhra Carnage, to disturb the public tranquility, to damage, ruin and destroy property of the Muslims, to do away and to injure Muslims, offences relating to religion etc. As proved from oral, documentary and circumstantial evidence, the conspirators were are A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, 62 and deceased A-35, Guddu, Bhavani, Dalpat, Jashvant and Ramesh (27 live accused and the 6 deceased accused who all have hatched the criminal conspiracy).

The requisites of an agreement for doing illegal acts and/or breaking the law among the mentioned accused, commission of offences abetted punishable under the I.P.C. and with reference to the agreement having done overt acts, etc. very much stands proved, beyond reasonable doubt.

At the cost of repetition it be noted that A-37 and A-18 are principal conspirators whereas, many other leading conspirators were there. A-18 is the principal conspirator as well as the executor of the conspiracy.

In light of the foregoing discussion, the point No.1 of determination needs to be replied in the affirmative, which has been accordingly replied, holding that the prosecution proves beyond all reasonable doubt that :

I-C. Point No. 1 :

Part- (1) In the facts and circumstances on 28/02/2002, when the accused met at Muslim Chawls, opposite Nurani Masjid, at Nurani and at S.T. Workshop, the conspiracy was already hatched, by the 27 accused. **In affirmative**.

Part- (2) Offence u/s. 120-B of I.P.C. has been committed hence all other offences, if proved to have been abetted, instigated or to have been committed in pursuance of the conspiracy by the accused, the 27 accused shall be punishable for commission of those offences for the respective offence R/w. Sec.-120-B of I.P.C.

The conspiracy was hatched any time after the Godhara occurrence on 27/02/2002 and before 9.30 a.m. of 28/02/2002 when the conspirators met at the site.

Part-(3)(a) GUILTY :-

The criminal conspiracy was hatched by A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, 62 and deceased A-35, Guddu, Bhavani, Dalpat, Jashvant and Ramesh (27 live accused and the 6 deceased accused have hatched the criminal conspiracy). These live accused are held guilty and shall be punished u/s.120-B of the Indian

Penal Code and also shall be punished for the proved offences r/w. Sec.120-B of I.P.C.

(b) GUILTY :-

These 27 accused shall also be liable to be punished for all the offences committed during the entire day, whether committed in presence of the accused or not read it with Sec.120-B of the Indian Penal Code.

(c) BENEFIT :-

All the other accused charged, shall be entitled to the benefit of doubt qua the charge of conspiracy viz. A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60, A-61 (34 alive accused).

II-A. Point Of Determination No.2 :

Ques. **Whether the Prosecution proves beyond reasonable doubt that, on the date, time and place of the offence, the accused have formed unlawful assembly, or not and whether the said unlawful assembly has committed offences against the public tranquility or not? (Part-1)**

If yes, the unlawful assembly was formed by which accused (Part-2 of the point) and which offences against public tranquility were

committed by which of the accused as a member of the unlawful assembly? (Part-3 of the point)

(With reference to Sec.-141, 143, 144, 145, 147, 148 and offences committed to be read with Sec.- 149 of I.P.C.)

II-B. DISCUSSION ON POINT OF DETERMINATION NO.2:

(i) <u>Sec.141 and Sec.143 of the Indian Penal Code</u> :

(a) As is clear, from the discussion as above, from the oral evidence of about 102 eyewitnesses discussed at Part -5 of the different occurrences, as is corroborated from the sting operation, it is held as answer to the point of determination No.1 that there were about 33 accused, who were conspirators among which 27 were live and 6 were dead. They all were present at the site in the morning and have participated in the offences as proved beyond reasonable doubt.

(b) As has been proved from the oral evidence that, A-1, A-2, A-4,A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44, A-46 (14 live accused) deceased Guddu, Jay Bhawani, Dalpat and A-35 were present at the Muslim Chawls opposite Nurani Masjid in the noon.

(c) It has also been proved by the testimonies of the PW that A-1, A-2, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-28, A-30, A-40, A-41, A-44, A-52, A-53, A-55, A-60, deceased Guddu, Jay

Bhawani and Dalpat, in all, 21 accused (18 live and 3 dead) were present at the site in the evening.

(d) It therefore, is clear that, whether in the morning, noon or in the evening occurrences, the presence and participation of numerous accused have been proved on record with active involvement in committing different offences at the site as member of unlawful assembly. As is clear from Sec.141, the ingredients to hold whether the assembly was unlawful or not, it is necessary that the assembly should be of five persons or more. Throughout the day, the assembly of the accused has been proved to be of more than five accused.

(e) From the entire scenario, it is clear that there was assembly of more than five accused throughout the day, which was doing numerous illegal acts and who all were armed with deadly weapons. It is therefore, clear that the assembly was of more than five persons, possessing deadly weapons, sharing the common objects throughout the day, whether it be in the morning occurrences, it be in the noon occurrences or it be in the evening occurrences.

The assembly of the accused was apparently having common objects to commit mischief, and other offences including the offences against human body, offences against property, offences relating to religion and offences against public tranquility, etc. In light of the above situation, it is proved that all the accused, who were present as a member of the unlawful assembly at the site and who have committed different offences, had common objects. They all are therefore, said to have formed unlawful assembly in the morning, noon

and evening of 28/02/2002.

(f) In light of the fact that the evidences on record clearly show that the offences committed during entire day of 28/02/2002 at the site of Naroda Patiya, were committed as members of unlawful assembly to execute the conspiracy by the conspirators and others have joined the assembly sharing the common objects. The offences were also committed by the unlawful assembly on the instigation and abetment of the conspirators who all, in fact, were acting in pursuance of the conspiracy.

(g) A-1, A-2, A-10, A-21, A-22, A-25, A-26, A-41 and A-44 have proved to have remained present throughout the day and have participated in the commission of offences in fulfillment of the common objects, hence, they are held to be members of unlawful assembly for the entire day in all the three occurrences. The other co-accused who were present and were participating only in one or the two of the three occurrences of the day shall also be held to be members of unlawful assembly when they were present and were doing overt act in the unlawful assembly.

(h) Except A-37 all the remaining conspirators have, joined in the unlawful assembly for executing the conspiracy in the morning itself. Thus, they all are punishable for the offences committed as members of unlawful assembly also. They are punishable for hatching criminal conspiracy, for committing different offences R/w. Sec.120-B as well as for becoming a member of unlawful assembly and doing offences as a member of unlawful assembly.

(i) There is no positive evidence that A-37 and other 29 accused other than the 31 accused as referred above, were also member of unlawful assembly hence, for those offences committed by the unlawful assembly and as its member, A-37 and the 29 accused cannot be held liable. It is different for the very same offences her criminal liability can be fixed for the offenes r/w. Sec.120-B of I.P.C. For the offences u/s.143, 144, 145, 147 and 148 of the I.P.C., the essential ingredient is to become member of unlawful assembly and A-37 and other 29 accused were not members hence, they need to be granted benefit of doubt qua charge of these sections alone.

(j) A-37 has played her part by instigating the miscreants in the Hindu mobs and she also saw to it that the offences were committed in pursuance to the conspiracy hatched, she is therefore, punishable as abettor but then, there is no evidence that she, in fact, has physically contributed commission of any offence. Her execution of the conspiracy was by instigating the people and thereby, seeing to it that the conspiracy is executed by other accused including the co-conspirators. In the facts of the case, she is liable for having instigated and abetted the other conspirators to form unlawful assembly, to carry out its objects and to execute the conspiracy.

(k) Many of the eyewitnesses testified that she has provoked, instigated the miscreants of the mob and has brought a situation in which remaining conspirators formed unlawful assembly sharing common objects. She therefore, cannot be held to be a member of the unlawful assembly for want of her presence as a member of unlawful assembly but, she has

abetted the formation of the unlawful assembly as discussed. This abetment by her is the overt act as envisaged by Sec.120-B but, since Sec.141 is not a distinct offence, she cannot be held guilty for Sec.141 to 149 as it is all based on membership of the accused in the unlawful assembly.

(l) As stands proved, except her, all the 26 conspirator accused (live), were the members of the unlawful assembly in the morning as they all were present at the site as conspirators and members of unlawful assembly and have actively played their role.

(m) Over and above, the 9 common accused, viz. A-1, A-2, A-10, A-21, A-22, A-25, A-26, A-41 and A-44, who have remained present in all the three occurrences as member of the assembly, spread throughout the day, A-4, A-28, A-30, etc. have formed unlawful assembly with the 9 common accused in the noon whereas, A-18, A-20, A-28, A-30, A-40, A-52, A-53, A-55 and A-60 have formed unlawful assembly in the evening along with the 9 common accused who remained present throughout the day. Putting it in more simple terms :

(m-1) Out of 26 conspirators accused who were the members of the unlawful assembly, nine accused continued even in the noon where A-4, 28 and 30 have joined. Thus, for all the offences committed in the noon, all the fourteen and the deceased can be held responsible as were members in the assembly then.

(m-2) Out of the 26 conspirators who were the members of unlawful assembly, 14 live accused conspirators continued

even in the evening including nine common accused where A-28 and 30 joined in the noon have continued and A-53 and 60 joined newly. Thus, in nutshell for the evening occurrence, these accused being members of unlawful assembly should be held liable.

(m-3) There is no clear evidence as to which accused joined at what time and who discontinued when, but, since the offence were large scaled, continued for the entire day, the site of offence is quite big, the commitment seems to be quite powerful, it is inferred that joining of the membership with reference to each of the accused is proved from testimony of the PW. Having joined the assembly, the accused would continue for reasonable time like in morning upto 12:00 p.m., in the noon upto 5:00 p.m. and for evening and then onwards.

(m-4) Now as far as 27 conspirators (including A-37) are concerned, they, in any case, shall be held guilty for the offences committed while r/w. Sec.120-B of I.P.C. For these 27 accused, it is not material as to they were member of unlawful assembly of which occurrence. They are to held liable even for commission of offences in their absence.

(m-5) Over and above, the 26 conspirators, A-4, A-28, A-30, A-53 and A-60 have joined the assembly who were only members, hence, those five can be held liable for the offence to be r/w. Sec.149 I.P.C. only. It is more for these five members of the assembly this Court has done exercise of classifying the occurrences as morning, noon or evening and has inferred that they have continued their membership atleast in the entire session. However, there is positive evidence for A-28 and A-30

to have been participating in the assembly in the noon and in the evening. However, in larger interest of justice, for all the 31 members of unlawful assembly (26 conspirators and five other accused) their culpability has been fixed keeping in mind their presence in the respective occurrence.

(m-6) A-37 was only conspirator, abettor, instigator and not member of the assembly whose criminal liability shall be accordingly decided.

(m-7) All the occurrences were committed by unlawful assembly as continuous, common and same transaction and the members were 26 conspirators and the five (A-4, 28, 30, 53 and 60) were only members of the unlawful assembly.

(n) There is no evidence on record by which it can be doubted that the members of unlawful assembly have not joined the assembly knowing it to be unlawful assembly. They have continued to be in the assembly by remaining in the assembly and by continuously doing acts and omissions prohibited by law for the fulfillment of the common objects and more particularly, offences against property and offences against human body, etc. It is clear on record that, the unlawful assembly has at least one of the common objects shared by all the members as provided u/s.141.

(o) The conduct, pattern of the offences, selection of the site, mode and manner in which the offences were done and the fact that there were at least nine common accused who remained present and have participated throughout the day in the unlawful assembly of morning, noon and evening and further

noting the fact that except the one conspirator viz. A-37, all the conspirators, having hatched the conspiracy have also worked for common object as proved of u/s.141 to execute the conspiracy hatched. All other conspirators have committed the offences as conspirators and even as member of unlawful assembly but, in fact, their liability can be invoked for the offences committed under the discussion in this point to read it with Sec.149 of the I.P.C.

(p) A-37, since has abetted the execution of conspiracy, by instigating the members of the mob to form unlawful assembly to commit offences and by working in pursuance of the conspiracy, it is clear that the assembly of the accused, who in fact became a member, can safely be held to be unlawful assembly as, is provided in the Indian Penal Code. It is held to have been proved beyond all reasonable doubts. The point No. 2 stands answered in affirmative.

(q) Thus, in nutshell, following accused are held to be members of unlawful assembly and are punishable for forming unlawful assembly knowing it to be unlawful on 28/02/2002, at the site of the offences, on the time of the occurrences which offences were committed is to be answered later.

(r) It is held that A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 accused) have formed unlawful assembly who all did overt act.

(s) Nine common accused, A-1, 2, 10, 21, 22, 25, 26, 41, 44

who all remained present and have participated in the offences throughout the day. Additionally 22 other accused, over and above, the nine accused were members of unlawful assembly formed in the three occurrences. The Part of the point is answered accordingly.

(t) What is punishable in this section is becoming member of unlawful assembly hence, assembly at what time and for which occurrence is not important. The date, the offence and site are important. What has been decided is the membership of the accused in the unlawful assembly. The above accused have been since proved to be members of unlawful assembly they have committed offence u/s S-143 of I.P.C.

(u) In light of Sec.143 of the Indian Penal Code, all the above referred accused shall be punished with imprisonment for either description for a term upto 6 months or with fine or with both. (To be punished u/s.143).

(v) HELD GUILTY FOR SEC.143 :

(v-1) GUILTY :-

A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are, hereby held guilty for the offences punishable u/s.143 r/w. Sec.149.

(v-2) BENEFIT :-

A-3, A-6, A- 7, A-8, A-9, A-11, A-12, A-13, A-14, A-15,

A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted BENEFIT OF DOUBT QUA CHARGE U/S. 143 R/W. SEC.149.

(ii) Part – 3 : Sec.144 :

(a) To bring home the guilt u/s.144 of the Indian Penal Code the prosecution needs to prove that there existed the unlawful assembly, the accused were the members of such unlawful assembly and that the accused were armed with deadly weapons at the time. Upon scrutiny of the oral evidence, either of the victim witnesses and / or of occurrence witnesses, it is clear that the evidence on record establishes that the accused were armed with deadly weapons like swords, guptis, tridents, daggers, fire arms, etc.

(b) Upon appreciating the oral evidence of all the occurrence PW, applying the principle of probability, noting course of natural events, noting the intention of the Hindu mobs to terrorize Muslims by show of criminal force and perusing oral evidence of PW-37, PW-52, PW-73, PW-94, PW-104, PW-106, PW-107, PW-108, PW-109, PW-112, PW-114, PW-184, PW-145, PW-149, PW-150, PW-135, PW-156, PW-143, PW-198, PW-167, PW-203, PW-209, PW-201, PW-213, PW-216, PW-217, PW-228, PW-236, PW-248, PW-257, PW-261, etc. it stands proved beyond all reasonable doubts that the accused involved by the PW and the accused practically proved to be present at the site were armed with deadly weapons, stones, inflammables, bottles, sword, trident scythe etc. on the date, time and sites of the offence. The oral evidence and the circumstantial evidence

when read with the result of murders of 96 Muslims and injuries to 125 Muslims, it can safely be inferred that unless all the accused who were members of the unlawful assembly were armed with deadly weapons, it is not possible to have the impact of the kind of the terror spread and the kind of the outcome of the riot came in fact. Such facts can safely be inferred by the Court, it is different that in the instant case, it has been proved by many prosecution witnesses and all occurrence witnesses had unanimity in voicing the position of that day where, all rioters were armed with deadly weapons.

(c) The confession of A-21 of having cut off hands and legs of the victim coming out from the muslim chawls is not at all possible without possessing and using horrible deadly weapon which could be even sharp cutting or blunt. In any case, A-21 cannot be believed to be without possessing deadly weapon on that day. The injuries sustained by some of the injured like PW-205 tally with possession and use of deadly and blunt weapons in the occurrences.

(d) In light of the above discussion point No. 3 (ii) of the point of determination No.2 is answered to the effect that :

Following accused have **COMMITTED OFFENCE U/S.144 of I.P.C.** and shall be punished with imprisonment of either description for a term which may extend to 2 years or with fine or with both.

(d-1) GUILTY :-

They are A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39,

A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused), all members of unlawful assembly are held GUILTY for offence u/s. 144 r/w. S-149 I.P.C.

(d-2) BENEFIT :-

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted BENEFIT OF DOUBT QUA CHARGE U/S. 144 R/W. SEC.149.

(iii) Part – 3 : Sec.145 :

(a) To bring home the guilt u/s.145 of the Indian Penal Code, the prosecution is required to prove that there existed an unlawful assembly, the members of the said unlawful assembly were sharing common object which, in the case on hands, the prosecution has proved beyond all reasonable doubts.

The police PW deposed that they had to use force to get the unruly mob dispersed. The mob was dispersing for a while but, it was reassembling immediately. Putting in the words of police officers, before the police returned to their points, the mobs were getting reassembled. PW-274, the Senior P.I. of Naroda Police Station has testified at paragraph 14 of his testimony that the unlawful assembly at the site was commanded in the manner prescribed by law to disperse under the order of D.C.P. Shri Gondhia present at the site, at about 11:30 a.m. viz. during the morning occurrences. It is deposed further that command to disperse were given to unlawful

assembly through the mikes of the Government vehicles but, the commands were intentionally, knowingly not complied.

The depositions of PW-274 and that of Mr. Gondhia have been perused carefully. Shri Gondia does not corroborate the fact of having issued any such command to the unlawful assembly to disperse. That being the situation, it is doubtful whether such command was issued or not, in the manner prescribed by the law by the D.C.P.

As is clear on record, this command must be u/s.129 of Cr.P.C. to the unlawful assembly but, it is not getting proved hence, **BENEFIT OF DOUBT is granted to all the accused A-1 to A-62** (except A-35, who was abated) as applicable qua the **charge u/s.145 r/w. Sec.149 of the Indian Penal Code**.

(iv) Part – 3 : Sec.147 :

(a) To bring home the guilt u/s.147 of the Indian Penal Code, the prosecution has successfully proved that the unlawful assembly has used violence in prosecution of the common objects. The violence was undoubtedly used by each of the accused because of which numerous offences against human body were committed. The death toll of the communal riot is proved to be of 96 members of the minority and injuries to about 125 members of minority who have sustained simple to grievous hurt including attempts to commit murders. The commission of offences of rioting by the unlawful assembly in prosecution of the common object of the assembly stands proved in the facts and circumstances of the case.

In light of the above situation, each of the accused mentioned herein under, is held to have used violence as a member of unlawful assembly except A-37 who was not member hence, all of them are held guilty of rioting and therefore, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

(b) HELD GUILTY FOR SEC.147 :

(b-1) GUILTY :-

A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are, hereby held guilty for the offences punishable u/s.147 r/w. Sec.149 of the I.P.C.

(b-2) BENEFIT :-

A-3, A-6, A- 7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted BENEFIT OF DOUBT QUA CHARGE U/S. 147 R/W. SEC.149.

(v) Part – 3 : Sec.148 :

(a) As is held herein above, the accused mentioned herein below were guilty of rioting as were armed with a deadly weapon and that each accused has used force or violence in prosecution of the common object while committing different

offences against the human body. It can safely be inferred that the accused know and have reason to believe that by use of weapon, force and violence used by them while rioting, it is likely to cause death. That being so, each of the accused shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both u/s 148 of I.P.C.

(b) HELD GUILTY FOR SEC.148 :

(b-1) GUILTY :-

A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are, hereby held guilty for the offences punishable u/s.148 r/w. Sec.149 of the I.P.C.

(b-2) BENEFIT :-

A-3, A-6, A- 7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted BENEFIT OF DOUBT QUA CHARGE U/S. 148 R/W. SEC.149.

(vi) Part – 3 : Sec.149 :

(a) All the accused mentioned above are held guilty as member of unlawful assembly who have committed offences while being and continuing as part of the said unlawful assembly and that it is that assembly which has committed

offences against property, offences against human body, offences relating to religion and offences against public tranquility, etc. It can safely be inferred from the conduct of the accused, from the continuation of the accused as member of the unlawful assembly and from very act of joining the said assembly by the accused that the accused have joined the unlawful assembly intentionally and that it can also be safely inferred that the accused had knowledge of the common object which in fact, were shared by all members of the said unlawful assembly. It is more than clear that the offence was committed in prosecution of the common object of such assembly and the accused, as a member of the assembly, knew that such offences were likely to be committed in prosecution of such common object.

(a-1) In this case, the prosecution has led very clear, positive and clinching evidence which has proved the object of the unlawful assembly beyond all reasonable doubt. It is proved that the unlawful assembly had objects including committing offences against human body like murder, attempt to murder, grievous hurt, etc. There is absolutely nothing on record to doubt the presence and membership of the mentioned accused of the said unlawful assembly. There is also nothing to believe that the gathering or the assembly in which the accused were present, possessing deadly weapons, was not coming within the purview of unlawful assembly. The facts of the case leaves no doubt in the mind that any other accused or group, mob or assembly has committed the offences at the site, on the day. The presence and participation of the accused as members of the unlawful assembly has been proved on the record.

(a-2) It is true that in case of some of the accused, the evidence of having thrown the stones, having thrown the bottles, shouting the slogans, etc. comes on record from the oral testimony of different victims of crime. This does not show weakness of the prosecution, it rather reveals, how truthful and honest the prosecution witnesses were who have stated the exact act and omission done. There is no PW who testifies as to which victim was in fact killed by which of the accused. When the principle of joint liability is invoked, it is not material also. From the facts and circumstances, discussed under the chapter of conspiracy and at different relevant parts, it is crystal clear that all the conspirators were united on that day, there was oneness in their conduct, preconsort is a proved fact, hence, in such circumstances, merely because there is no substantial evidence on the independent role of the accused, the Court cannot take a lenient view as it amounts to doing technical justice. The circumstances on the record, the conduct of the accused on the record, the fact that all the members of unlawful assembly were certainly sharing common objects, it cannot be believed that different offences committed in different occurrences are separable from each other. The offences occurred in the morning, noon and evening is a package of many incidents or instances of commission of different offences. The word occurrence has been used to exhibit series of instances or incidents. Participation of every member of unlawful assembly is a proved fact in every occurrence committed in their presence. It is prudent, in tune with principles of appreciation of evidence to be applied in a case where the principle of joint liability has been invoked and it also goes with the principle of equity to read and appreciate the testimony of the victims of crime by perceiving that all the

offences were done as per the time slot classified in the case of morning, noon and evening. To give perfect effect and true colour to the testimony of the victims of crime, it would be most fitting to perceive the occurrence as a package and not by dividing commission of each of the offence and make different compartment of that particular offence. What has happened in each slot of time was a joint act of all those who were present at that particular time as member of the unlawful assembly and who have been found to have been participating in the occurrence, may be by doing stone pelting or by shouting slogans, as the case may be. This Court firmly and with all judicial prudence to the command of this Court believes that the entire occurrence whether was morning occurrence, noon occurrence or the evening occurrence, where numerous offences were committed, was one package for the entire occurrence and that only be seeing it as a package of the occurrence, true justice can be delivered. It is well known that the Court can infer happening of certain facts. In this case also, it was a need of justice to infer that in such a large scaled series of commission of crimes, no member of unlawful assembly would appear in the unlawful assembly and after throwing stone he would return to his house. It is not setting within the framework of normal and natural human conduct. It is observed, found and proved that the accused did have a motive, they were tremendously over charged with the idea to take revenge with the Muslim Community as a whole and they were totally out and had clear objects in their minds of doing away with maximum Muslims and to destroy, damage and demolish their religious place and property. Many prosecution witnesses have testified that the members of the mob were showing the newspaper of that day where, the photographs of

Hindu corpses were published and that the excited, provoked and instigated accused were telling to the victims that “You Muslims have done this to Hindus. You will now not be able to live. Go back to Pakistan, today is your doomsday etc. etc.” There is no reason to disbelieve this version. On the contrary, this perfectly goes with the spirit, mood and psyche the mob had that day. This conduct shows the determination, dedication and commitment of the rioters accused to the cause undertaken by them in form of the objects of the unlawful assembly. With this background, it would not be just and proper even to perceive that the acts and omissions done by the accused should be understood, keeping in mind his / her individuality. It is their collective attitude, collective decision, collective action, collective omission and collective commission of crimes which is the gist of principle of joint liability whether been decided with the aid of Sec.120-B or Sec.149 of the I.P.C. Meaning thereby, even if the accused was found to be doing stone pelting, his participation is also very much there in the offences committed by his colleague accused if, he is proved to have been sharing the common objects which the said co-accused.

(a-3) Hence, it is held that commission of all the crimes, in the morning, noon or evening occurrences, were committed by the accused who have, formed the unlawful assembly.

(a-4) In light of the above discussion, it becomes clear that, A-37 has instigated and abetted the co-conspirators to form unlawful assembly and, to commit offence which was her overt act in pursuance to conspiracy. She was not a member of unlawful assembly at that time hence, the accused except A-37

are also punishable for all the proved charged offences to be R/w. S-149 of the I.P.C. since their joint commission of offences invoked their joint liability. The accused are held liable for commission of offences r/w. Sec.149 of I.P.C. as member of unlawful assembly. Their joint liability for all the proved charged offences stands proved beyond reasonable doubt.

GUILTY :-

A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are hereby held liable for all the offences committed by the unlawful assembly for the occurrence in which they were present and were participating while reading it with 149 I.P.C.

The Part of the point is answered accordingly.

(b) BENEFIT :-

A-3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 29, 31, 32, 36, 37, 43, 48, 49, 50, 51, 54, 56, 57, 59, 61 (30 live accused) are granted benefit of doubt qua the charge for having formed unlawful assembly at any time of the day.

In light of the foregoing discussion, the point No.2 of determination needs to be replied in the affirmative, which has been accordingly replied.

Upon analysis of all material on record it stands proved

that A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, A-62 (in all 26 live accused) and 6 deceased accused were the members of the unlawful assembly in the morning viz. from about 9:30 a.m. to 12:00 noon.

Upon analysis of all material on record it stands proved that A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44 and A-46 (in all 14 live accused) and deceased were the members of the unlawful assembly from about 12:00 noon to 5:00 p.m.

Upon analysis of all material on record it stands proved that A-1, A-2, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-28, A-30, A-40, A-41, A-44, A-52, A-53, A-55, A-60 (in all the 18 live accused) and deceased were the members of the unlawful assembly in the evening from about 5:00 p.m. onwards.

Upon analysis of all material on record it stands proved that A-37 was not a member of the unlawful assembly but was a kingpin and was one of the principal conspirators.

Upon analysis of all material on record it stands proved that A-4, A-28 and A-30 for the noon occurrence and A-28, A-30, A-53 and A-60 for the evening occurrence were only the members of the unlawful assembly but, they were not the conspirators.

Upon analysis from the oral evidence of the victims it stands proved that A-1, A-2, A-10, A-22, A-25, A-26, A-41 and A-44 are the 8 accused who remained members of the unlawful

assembly throughout the day and they have not discontinued with the assembly.

From his extrajudicial confession, A-21 is inferred to be a conspirator as well as a member of the unlawful assembly.

A-18 is the principal conspirator like A-37.

III-A. Point Of Determination No.3:

Ques. Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, whether the accused have committed offence of contempt of the lawful authority of public servant or no ? If yes, which of the accused has committed which offences? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec.186, 188 of I.P.C., Sec. 186 R/w. 149, 188 R/w. 149, 186 R/w. 120-B, 188 R/w. 120-B of I.P.C.)

III-B. Discussion On Point Of Determination No.3 :

[i] Sec.186 of I.P.C.:

To constitute this offence, the prosecution is required to

prove that some public servant was voluntarily obstructed by some of the accused while he was discharging his public function.

There is nothing on record in which any of the public servant has made any such complaint or filed any such complaint against any of the individual accused nor any of the police witness or any of the public servant has so testified. In light of the said fact, the offence u/s.186 does not stand proved to have been committed by any of the accused beyond reasonable doubt. Hence, A-1 to A-62 (except A-35 who was abated) are entitled to the benefit of doubt qua the charge u/s. 186 of I.P.C.

A-1 to A-62 (except A-35) have been granted benefit of doubt qua charge u/s.186 r/w. Sec.120-B and Sec.186 r/w. Sec.149 of the I.P.C. as the case may be.

(ii) <u>Sec.188 of I.P.C.</u> :-

(a) As has been proved by the deposition of police witnesses, the curfew order was issued on 28/02/2002 under Sec.144 of the Cr.P.C. The curfew was in effect from 12:20 p.m. of 28/02/2002. Exh.1580 is the Curfew Order duly issued and as can be presumed was properly issued, circulated, promulgated by the Competent Authority. It is therefore, safe to infer that all the residents and visitors of Naroda area were in know of issuance of such order by which necessary directions were given to prohibit the general public from assembling in the public place.

(b) As held, the curfew order was in operation after 12:20 p.m. of 28/02/2002 and that though, it was in effect, numerous accused have assembled in different public places like Muslim Chawls, near Gangotri Society, Gopinath Society, on the way to S.R.P., etc.

(c) The prosecution witnesses have proved through their testimony that the accused came in the mob with deadly weapons and have committed numerous offences to an extent of attacking, injuring, and killing different deceased and prosecution witnesses. The accused of the noon and evening occurrences have been proved to have acted in clear disobedience of the said order.

(d) The prosecution has successfully shown that the disobedience of the said Curfew Order issued by the Police Commissioner of Ahmedabad has caused obstruction, injury and risk to several persons and that their act and omission of disobeying the act was endangering human life and human safety which has resulted into riots.

(e) This breach of lawful order issued by the Police Commissioner of Ahmedabad is an offence u/s.188 of the Indian Penal Code. It is proved fact that the offences committed by the accused have adversely affected the law and order situation then, which has added severity of the communal riot and it has caused danger to human life.

(f) The defence has neither disputed or rebutted the presumption of proprietary of issuance of the order, authority of the Police Commissioner, Ahmedabad and the violation of

the said order.

(g) It cannot be inferred as there is no material to infer that there was conspiracy to violate the order hence, Sec.120-B would not be attracted.

(h) Upto 12:20 p.m. there was no such order, hence, those who were present only in the morning occurrence cannot be held to be liable for violation of the order. However, the accused who have been found to have remained present in the noon as well as in the evening occurrences as members of unlawful assembly, need to be held liable for commission of offence u/s.188 of the Indian Penal Code as they have proved to have violated the curfew order by unlawfully assembling which has resulted into further danger to human lives and safety. The extrajudicial confession proves her rounds and visits at the site throughout the day. Thus, she has violated the curfew order but mere disobedience is not offence unless it entails one of the consequences mentioned in the section which prosecution has not proved in case of A-37. Hence, all the ingredients of the Section against her does not get proved. Those who were not present cannot be held liable and presence, disobedience and the result together is the offence. This offence has to be held as have been committed individually and each accused for his own violation shall be held liable. It is therefore, held that benefit of doubt to A-37 and others not present needs to be given and the below mentioned accused shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine upto Rs.1,000/- or with both.

(i) GUILTY :-

A-1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 26, 28, 30, 40, 41, 44, 46, 52, 53, 55 and 60 (total 21 accused) are held guilty for the offence u/s 188 of I.P.C.

(ii) BENEFIT :-

A-3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 27, 29, 31, 32, 33, 34, 36, 37, 38, 39, 42, 43, 45, 47, 48, 49, 50, 51, 54, 56, 57, 58, 59, 61 and 62 (total 40 accused) are entitled for benefit of doubt qua charge u/s 188 of I.P.C.

The question is accordingly answered in the affirmative to an extent of the above referred accused.

IV-A. Point Of Determination No.4:

Ques. **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, the accused have committed offences relating to religion or not?**

If yes, which of the accused have committed the offence and which of the offences have been committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec.295, 295A and 298 of I.P.C., Sec. - 295 R/w. 149, 295 R/w. 120-B, 295-A R/w. 149, 295-A R/w. 120-B, 298 R/w. 149 and 298 R/w. 120-B of I.P.C.)

IV-B. Discussion On Point Of Determination No.4 :

[i] Qua Sec. 295 of I.P.C.:

(a) Sec.295 can be said to be applicable when any accused intentionally wounds the religious feeling of others by injuring their place of worship. In the facts and circumstances of this case, the accused who were gathered and who have been held as conspirators (except A-37) in the morning have attacked Nurani, they damaged the minarets of Nurani, they dashed a tanker filled in with inflammable substance with Nurani, they have thrown kerosene from the carts of kerosene lying nearby into the Nurani and burnt Nurani and thereby, damaged Nurani Masjid which is a place of worship for the Muslims. A-37 has instigated and provoked the accused, though she has not gone personally inside the Nurani Masjid to attack the Nurani Masjid but, by provoking the mob / co-conspirators, she has abetted the attack and assault on Nurani Masjid and thus, Nurani Masjid was damaged. In light of the said fact and getting it confirmed from the sting operation and more particularly extra judicial confessions of the three accused, it becomes amply clear that the proved commission of the offences stands supported. The extra judicial confessions support the commission of offences which is proved beyond all reasonable doubt on the record to have been committed by the accused. The accused who were present in the morning only

are therefore, involved in the offence since, the offence is of morning.

(b) A-21 also has confessed that the foundation of Nurani on that morning was not shaken. This shows that he has personal knowledge and this proves his presence in the morning at the site. Considering this, it becomes clear that the accused who were present in the morning are all responsible for assaulting and attacking the Nurani Masjid in the morning. It is very much clear on record that assault and attack on Nurani was only done in the morning. Considering the same and further securing corroboration from extra judicial confession of the accused for himself and for co-accused, all those who were present at the site of Nurani can safely be held to have committed the offence u/s.295 r/w. Sec.149 of I.P.C. and all the conspirators shall be punished while read with Sec.120-B of I.P.C. and they shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

(c-1) GUILTY :-

A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (27 live accused) shall be punished for commission of the offence u/s.295 r/w. Sec.120-B of the Indian Penal Code.

(c-2) BENEFIT :-

A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31,

A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60 and A-61 (34 live accused) are granted benefit of doubt, qua charge u/s.295 r/w 120-B of I.P.C.

(c-3) GUILTY :-

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (26 live accused) shall be held guilty for the offence u/s.295 r/w. Sec.149.

(c-4) BENEFIT :-

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 37, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (35 live accused) are granted benefit of doubt for the offence u/s.295 r/w. Sec.149 of I.P.C.

[ii] <u>Qua Sec.295-A of I.P.C.</u>:

(a) The charge under this Section has been framed. This Court has convicted the accused under Sec.153-A of the Indian Penal Code. In light of the statements of objects and reasons, which are genesis of Sec.295-A of the Indian Penal Code, it becomes clear that, this Section was enacted to curb the evil of deliberate and malicious acts, intended to outrage religious feeling of any class by words mainly written publication, etc.

(b) Looking to the object and reasons while bringing Sec.295-A into the Statute books, it becomes clear that this Section is more applicable for some written article or some written

material, literature, book, publication, etc. The prosecution has not proved any such ingredient having been existing in the present case. Moreover, since, the accused have been held guilty u/s.153-A and when this Section has been brought to the Statute book to fill in the lacuna of Sec.153-A of the Indian Penal Code, it needs appreciation accordingly.

(c) Since the section seems to have more affinity to the ingredient of publication or any written representation and since, the accused have been held guilty u/s.153-A of I.P.C., this Court is of the opinion that since, there is nothing by way of publishing any material and thereby, doing any deliberate and malicious act to outrage religious feeling of Muslim Class or Muslim religion, it is doubtful as to whether this Section, in spirit, would be attracted in the facts of the case or not, considering which all the accused are **hereby granted benefit of doubt viz. accused No.1 to 62 (except A-35 who was abated) for the charge u/s.295-A r/w. Sec.149 and r/w. Sec.120-B of the I.P.C. etc.**

[iii] <u>Qua Sec.298 of I.P.C.</u> :

(a) To bring home the guilt u/s.298 of the Indian Penal Code, the prosecution needs to prove that the accused have uttered any word or made any sound or made any gesture or have placed any object with an intention to wound the religious feeling of any person. In light of the facts and circumstances of this case, the ingredients of having spoken any words or doing any gesture or putting any object, etc. does not stand proved, hence, it is doubtful whether the accused have done all such acts and omissions. Having not found it, it is just and proper to

grant benefit of doubt to all the accused in the peculiar facts and circumstances of this case.

(b) On plain reading of Sec.298, it appears that it relates to oral words uttered in presence of a person with the intention of wounding his religious feeling. It is true that the accused have done acts and omissions. It is also true that the accused have uttered different slogans but, those slogans were related to community of the victims and it is not related to religious feeling of the victims, considering which, in the humble opinion of this Court, any application of Sec.298 to the facts of the present case is a matter of doubt in facts of the case. Hence, all the accused No.1 to 62 (except A-35) **are granted benefit of doubt qua the charge framed u/s.298 r/w. Sec.149 and Sec.298 r/w. Sec.120-B of the Indian Penal Code.**

V-A. Point Of Determination No.5:

Ques. **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any of the accused has voluntarily caused hurt with intent to prevent or to deter public servant from discharging his duty as public servant or not? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?**

(With reference to Sec.- 332 of I.P.C., Sec. - 332 R/w. 149, 332 R/w. 120-B of I.P.C.)

V-B. Discussion On Point Of Determination No.5 :

[i] Qua Sec. 332 of I.P.C.:

(a) To bring home the guilt u/s.332 of I.P.C., the prosecution is required to prove that any accused has voluntarily caused bodily pain, disease or infirmity to any public servant while the public servant was discharging his duty and that the act of causing hurt was with the intention to deter the public servant.

(b) Upon perusal of oral, documentary and even appreciating the circumstantial evidence, it stands proved that none of the public servant has given any complaint to have sustained any bodily pain, disease or infirmity at the time on which the public servant was discharging his duty as a public servant.

(c) Different police witnesses like PW-274 did make a cursory mention about having sustained injury. There is nothing to show that the injury was sustained at the instance of the accused, moreover, it cannot be believed that if the police official had genuinely sustained injury, he would not file a complain, go for treatment and got it noted at the police table. In case of injury to any police man, vardhies for the same must have been issued and even the treatment also must have been taken. In case of police it cannot be believed that the injury certificate would not be obtained by the police because, atleast the police knows the importance of injury certificate and even the he has easy access for the infrastructure of the same. Considering this, the cursory mention of sustaining injury creates doubt. That being so the benefit of doubt is granted to

the accused qua this charge.

(d) In light of the foregoing discussion, it is clear that none of the ingredient as required u/s.332 of I.P.C. stands proved hence, A-1 to A-62 (except A-35 who was abated) **have all been granted benefit of doubt qua the charge of the offence u/s.332 r/w. Sec.149 and 332 r/w 120-B of the Indian Penal Code.**

VI-A. Point Of Determination No.6:

Ques. **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, the accused have committed offences of robbery and dacoity or not? If yes, which of the accused have committed the said offence and which offences have been committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?**

(With reference to Sec.- 395, 396, 397 and 398 of I.P.C., Sec. - 395 R/w. 149, 395 R/w. 120-B, Sec. - 396 R/w. 149, 396 R/w. 120-B, Sec. - 397 R/w. 149, 397 R/w. 120-B, Sec. - 398 R/w. 149 and 398 R/w. 120-B of I.P.C.)

VI-B. Discussion On Point Of Determination No.6 :

[i] <u>Qua Sec. 395 to 398 of I.P.C.</u>:

[a] Sec.395 is the offence of dacoity. **'dacoity'** is defined u/s.391 of the Indian Penal Code. Sec.391 of the Indian Penal Code defines that dacoity is nothing but robbery by five or more persons. Sec.390 defines **'robbery'**. The requisite of it is that the theft must have in fact, been committed. For this reason, one need to look into the definition of theft. Sec.378 of the Indian Penal Code defines **'theft'**. It is provided therein that, the theft is said to have been committed if, with dishonest intentions, the movable property is moved in order to take it away. In light of the fact that the motive of the accused is not so to take away the property of the victims. The common objects shared by the accused and the agreement of the accused, the conspiracy hatched by the accused is focusing on the fact that more and more Muslims should be done to death. The intention was to settle the score of Godhra Carnage or to take revenge of the Godhra Carnage. The object was to commit offence against property but, the object has not been proved by the prosecution of dishonestly taking away the property of the victims.

[b] In the chapter of theft, mens rea plays a very vital role. From the common objects and the intentions, the agreement arrived at among the accused, the conspiracy hatched by the accused, it becomes doubtful as to the accused at that point of time, had an intention of dishonestly taking away the movable properties of the victims or not.

[c] It is true that the object was to damage, destroy, to ruin

the movable and immovable properties of the victims. Had there been intention of taking away the movable properties dishonestly, the accused would not have burst the gas cylinders lying in the houses of the Muslims and that as the V.C.D. recorded on 11/03/2002 shows all the property of the Muslims was totally torched, the property was ransacked, the property was lying here and there, many of the movables were found in the panchnama to have been noted to lying there in a scattered position, which all, would only indicate that there was no dishonest intention of taking it away and so was never a common object being shared by the accused nor that was any time a proved intention of the accused.

[d] Considering this, this Court is of the humble but, firm opinion that since the mens rea which is a very vital essential ingredient of the offence of theft, is missing or is doubtful to have been existed in the act and omission of the accused, it is difficult to hold that the accused have committed offence u/s.395 to Sec.398.

[e] Needless to add that Sec.391 is controlling Section of Sec.395 to Sec.398. The ingredient of Sec.391 (lies in Sec.378). since all the ingredients u/s.378 do not stand proved in the offence committed by the accused, the application of the sections becomes doubtful.

[f] For want of proof about the intention as required u/s.378 of the I.P.C. this court is of the opinion that, in the result, the accused need to be granted benefit doubt for proof of such mens rea at the time of commission of the offences and hence, **all the accused (except A-35) are entitled to benefit of**

doubt u/s.395 to 398 all r/w. Sec.120-B and also r.w, Sec.149 of the Indian penal Code.

VII-A. Point Of Determination No.7:

Ques. Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, the accused have committed any offence related to mischief or not? If yes, which accused has committed the offence and which of the offences were committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec.- 427, 435, 436 and 440 of I.P.C., Sec. - 427 R/w. 149, 427 R/w. 120-B, Sec. - 435 R/w. 149, 435 R/w. 120-B, Sec. - 436 R/w. 149, 436 R/w. 120-B, Sec. - 440 R/w 149 and 440 R/w. 120-B of I.P.C.)

VII-B. Discussion On Point Of Determination No.7 :

[i] Incidents of destroying, damaging, ruining, looting and ransacking the properties (Sections 427, 435, 436 and 440 of I.P.C.) :

(a) As has been discussed at Chapter No.2 of Part-2 where maps of site of offence have been discussed. Exh.474 Part 1 to

5 are different 4 maps revealing the position on that day at the site of offence. Part-1 is related to the position at Nurani Masjid and surrounding Nurani Masjid. If that is seen, about 44 shops and dwelling houses have been shown to have been torched and about 33 incidents of looting and destruction and damaging of 33 properties have been shown in the map.

Part-2 and 3 of the map are relevant as far as the damages caused in the Muslim Chawls are concerned. As the map reveals, about 134 houses and numerous shops were torched on that day, as has been reflected in the panchnama about 88 properties were looted, damaged, destroyed and ransacked. Thus, in all 222 properties were damaged. No contents of the map has been challenged and that through the testimony of PW-63 and others, the prosecution case qua damages stands proved through oral testimony of PW, maps, panchnamas etc. In all, properties worth lacs of rupees were ruined, damaged, destroyed and burnt.

(b) Numerous PWs of about 93 PWs like PW-2, 37, 40, 52, 59, 60, 62, 73, 79, 83, 86, 90, 91, 92, 93, 94, 104 TO 108, 111, 114, 117, 136, 138, 141, 143 to 145, 147, 148 to 150, 156, 157, 162, 171, 173 to 175, 177, 179, 181, 183, to 185, 187 to 189, 192, 201, 203, 213, 219, 227 to 231, 233, 236, 238, 242, 246, 249, 255, 257, 258, 261 and about 25 PWs from the chapter of occurrence witnesses etc. have testified to have suffered damages at their houses, at their shops , at their carts, at their cabins. Some of the PWs have also told about their vehicles having been burnt and the kerosene carts were looted and used to burn the Muslim Chawls, the kerosene carts lying near Nurani were used to burn Nurani Masjid and the kerosene

lying in big tins in the rationing shops of Muslim chawls was utilized to torch at Muslim chawls. Many of these witnesses have stated that their everything was taken away, ruined, destroyed, ransacked by the men of the mob on that day, the properties were burnt by throwing kerosene inside it, the damages to the Nurani Masjid have also been proved, 30 different panchnamas are on record for damages, the panchnama Exh.1556 is on record to bring on record the V.C.D. shot on 11/03/2002 exhibiting the damages to have been caused at the site, the panahcnama Exh.1749 in 5 parts is on record which is also proving damages, the letter of I.O.C. Exh. 2391 is on record by which it is clear that about 25 gas cylinders were taken away by the mob from the Uday Gas Agency. Numerous occurrence witnesses, numerous other witnesses have also proved the damages to have been sustained, many many Muslim Chawls have been burnt altogether, the extra judicial confession of A-21, A-22 and A-18 also corroborates the damages, A-18 has collected 23 fire arms as confessed, those fire arms have been confessed to have also been used to blast the gas cylinders in the houses of Muslims, many PWs have seen burning dwelling houses all around. The amount for which damages were caused goes beyond lacs of rupees as, in fact, entire area where Muslims were inhabiting, was burnt totally. It is a matter of common experience that the damages on such a large scale are not possible in sudden provocation. It is only possible with proper preparation and pre-planning which the accused did have amongst them.

(c) In fact, entire Naroda Patiya area and more particularly the Muslim Chawls and properties of Muslims were burnt with the intentions and while the mob was sharing the common

object.

(d) In light of the above oral and documentary evidence and many more evidences on record, it stands established that the offence against property and more particularly, offence of Sec.427, 435, 436, 440 were committed by the accused while they all were sharing the common object of the unlawful assembly and that all these damages were caused in pursuance of the criminal conspiracy hatched by the accused and it was also committed by the active abetment of the conspirators who have instigated the mob to form unlawful assembly to carry out its object and to do all offences.

[ii] <u>Qua Sec. 427 of I.P.C.:</u>

[a] To bring home the guilt u/s.427, the controlling section, 425, the definition of the mischief needs to be perused. The essential ingredient of the offence of mischief is intention or knowledge of likelihood to cause wrongful loss or damage to any person and that the destruction of the property, in fact, should have been caused and that the change made in the situation of the property must have destroyed the property.

To prove the offence u/s.427 the additional fact also needs to be proved that the loss or damage caused was valued at Rs.50/- or more.

[b] It needs a note that it is not essential to prove ownership in the property in respect of which, mischief has been done.

Possession is prima-facie proof of the title.

[c] From the oral evidence, panchnamas of damages, complaints on record, it becomes amply clear that during the entire day on 28/02/2002, at the time and site of the offence viz. at the Muslim Chawls, in the dwelling houses of Muslims, offences against property including mischiefs were committed by the accused. The commission of offence of mischief has been committed in the morning, in the noon and even in the evening occurrences as has been proved on the record by numerous PW as has already been discussed. It is a proved fact that the accused who were found and proved to have been involved in the morning offences viz. the accused Nos.1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, 62 and the deceased accused have formed unlawful assembly to execute the conspiracy. In the morning the dwelling houses of the Muslims were burnt, wherein, even some live Muslims were also burnt alive. Numerous occurrences took place throughout the day which can roughly be stated to be about 222 different incidents in the Muslim Chawls opposite Nurani Masjid. These all accused did the offences of mischief in the morning.

[d] In the noon occurrence, A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44, A-46 and four of the deceased accused have formed an unlawful assembly. All the offences related to the property, mischiefs were done in the noon as well by these accused.

[e] It needs a note that A-1, A-2, A-10, A-21, A-22, A-25, A-26, A-41 and A-44 are the nine common accused who were present and have participated in all the three occurrences, all the other

conspirators present as the members in the morning have discontinued with the unlawful assembly and that the mentioned nine accused continued in the unlawful assembly even at noon.

It is also notable that A-4, A-28 and A-30 are the three new accused who joined the unlawful assembly from the noon occurrences A-5 and A-46 continued. Therefore, these 14 live accused and the four deceased accused were forming an unlawful assembly in the noon who did the occurrences in the noon. The modus, outcome, object and the manner of causing damages remained same.

[f] In the evening about 18 live accused and three dead accused have been proved to be a part of the unlawful assembly who did the evening occurrences. The accused who were involved in the evening occurrences are A-1, A-2, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-28, A-30, A-40, A-41, A-44, A-52, A-53, A-55, A-60 and the deceased accused. Even in the evening the offences, their modus, manner, object, damages have all remained the same.

[g] It needs a note here that A-4 who joined and A-5 and A-46 who continued the unlawful assembly in the noon seems to have discontinued in the evening. A-28 and A-30 who joined the unlawful assembly in the noon have continued in the evening also.

[h] A-53 and A-60 have joined only in the evening occurrences. Thus, in nutshell, A-4, A-28, A-30, A-53 and A-60 who have joined after the morning occurrence are the five

accused who joined only as members of unlawful assembly. They joined after but, were sharing the common objects with the members of the assembly who did not discontinued and who joined the assembly from morning itself. The accused, who joined in the noon, are A-4, A-28 and A-30 and in evening A-53 and A-60 have joined and A-18 has rejoined after having discontinued in the noon. A-28 and A-30 have continued to be the members of the unlawful assembly even in the evening. These five accused viz. A-4, 28, 30, 53 and 60 are not held to be conspirators for want of similarity in the conduct with other conspirators viz. their absence in the morning occurrences which goes with the conspiracy.

[i] Looking to the pattern of offences, looking to the conduct of the accused, looking to the fact that there are several common accused who remained continuously as member of unlawful assembly right from the morning until the last occurrence, noting the fact that the common objects of the unlawful assembly throughout the day has remained the same, noting the fact that throughout the day the modus operandi of the accused, throughout the day the kind of offences committed and gravity of offences remained consistent, no doubt is left out in the mind of the Court that the unlawful assembly has formed once in the morning, has in fact, been continued. It is different that some of the members of that unlawful assembly have discontinued in the noon and new members have joined and in the evening some of them have discontinued and some of the new members have joined. But, no doubt is left out that the offences of the entire day are of same, of one common transaction and by a common unlawful assembly formed on that day.

[j] This Court is of the firm opinion that the unlawful assembly was formed in the morning since, A-37 has instigated to form the unlawful assembly to execute the conspiracy hatched among the accused and that the said unlawful assembly has continued throughout the day.

[k] It is an additional factor that the site of the attack or assault has also not been changed. The pattern of burning the victims, etc. have not been changed, the pattern of destroying, ruining, ransacking the properties of victims, committing the offences of mischief, offence against human body, etc. have not been changed.

[l] These common factors have proved that the unlawful assembly has continued having been formed in the morning itself until, the last occurrence of Khancha. it is then after, the unlawful assembly has dispersed.

[m] That being the situation, all the accused viz. 26 live accused who were the conspirators and who have formed the unlawful assembly in the morning upon the instigation to form the unlawful assembly and to execute the conspiracy by the kingpin and one of the principal conspirators A-37, have been continued as member of the assembly till they discontinued. Whichever members have joined the unlawful assembly and whichever members have discontinued to be the member of the unlawful assembly is to be appreciated and decided only for the offences which were committed in one or two of the three occurrences only. For illustration, if murders are proved to have been committed in the morning, noon and even in the

evening then, the fact remains that the same commission of offence of murders by unlawful assembly has been proved. The change is only of site of the murders and that the name of the deceased victim changes, but offence of murder remains same in all the three occurrences. The accused in riot are held guilty not for the proof of name of the deceased but, it is for the charged offence like murder etc., hence, for the offences which were committed in all the three occurrences, the accused shall be held guilty of the particular offence. In such cases, his presence and participation in the occurrence as member of unlawful assembly is material and not in which occurrence. He may be a member of the assembly at any time does not alter his guilt since the particular offences were committed in all the three occurrences.

[n] However, the fact that in the morning, in the noon and in the evening the offences against human body remained the same as, in the morning, in the noon and in the evening, numerous Muslims have been done to death, numerous Muslims have been attempted to be murdered, numerous of Muslims have been given simple to grievous hurt, numerous of properties were destroyed by the accused, numerous offences of mischiefs were committed in different dwelling houses, shops, carts, cabins of the Muslims. For all these offences, presence in the mob is sufficient as in every occurrence commission of these offences were common.

[o] The activities of the entire day fully go with the common objects mentioned that of the unlawful assembly formed in the morning, it entirely goes with the execution of the conspiracy, as far as conspirators are concerned and that all the accused,

whether joined in morning, noon and or evening, have committed similar type of offences.

[p] Except the offence of rape committed in the evening, for which obviously an individual shall be held liable and not the unlawful assembly, all other offences against human body have been committed, in the morning, noon and in the evening viz. the offences against human body and the offences against property have remained common in all the three occurrences. Moreover, the offences related to religion were only committed in the morning for which, the accused who were members of the unlawful assembly in the morning only have been held liable. Throughout the day, the accused had deadly weapons with them and different offences have been committed by all of them.

[q] A fact needs a notice that the V.C.D., the panchnamas of the site, the maps prepared from the panchnamas of the site, the acceptance by the accused while cross examining the victims that there houses were reconstructed, repaired or made usable by Islamic Relief Committee, if are read conjointly, it goes without saying that, the Muslim victims have suffered wrongful loss and that damages have been caused to them. It is now proved fact that the destruction of their property has taken place as stands clearly revealed in numerous panchnamas and it stands firmly proved while appreciating the evidence of about 93 witnesses who state about damages, destruction and ruining of their property in the communal riots. The commission of offence has changed the property of the Muslims which was destroyed by the accused.

[r] It needs a note that as, has emerged in the oral evidence, Muslims were in possession of dwelling houses, carts, shops, cabins, which were all, torched on the date of communal riot by the accused. It is true that the Muslims were unable to produce any documentary evidence as proof of their possession. But then, in one such case, coincidentally, the victim did possess such document which, after confronting to the victim and after noting the readiness of the victim to produce the document sought for by the defence, the defence declared that it did not want that document to come up on record.

[s] It is a matter of commonsense that once the entire house is burnt, it is not possible for the victims to produce the documents which are proving possessions of the Muslims as it cannot remain intact. It is obvious that the document also must have been burnt away. It is known that the Muslim victims were mainly residing in hutments and or very small kachha houses and or roof-topped houses. It is also a known fact that the hutment holders are hardly having usual documents to prove their possession. The victim ought to have secured new documents but, the victim had to leave the Naroda Patiya area and had to go to reside in the houses built up by the Islamic Relief Committee. In the said facts and circumstances, this Court has no hesitation in holding that the victims are injured, are sufferers of the communal riots and have lost their persons and their properties and that in such circumstances, there is no reason to disbelieve them as far as their possession of the properties damaged are concerned. Even the panchnamas most of which were drawn in their presence prove their possession in the particular properties. Some of the

panchnamas were not drawn in their presence but, it was drawn in presence of another resident and that too, Hindu resident of the area who too has introduced the property as that of a Muslim.

[t] These all prove that the damage and destruction was caused to the property of the Muslims and that while torching the houses, the accused must be knowing it to be the property in the possession of Muslim victims. In the facts and circumstances of the case, looking to the intentions, motives and objects, the accused had, their intention or knowledge of likelihood of causing wrongful loss to the Muslims by their deed is held to be very much there in their minds.

[u] With the above discussion, it gets very clear on the record that all essential ingredients to bring home the guilt u/s.427 since, stand proved, the charge u/s.427 of the Indian Penal Code stands proved against all the 31 members of unlawful assembly.

The destruction and damaging of the Muslim property had been continued throughout the day. Only in the Muslim Chawls itself, about 222 properties were ruined, burnt and destroyed. It is therefore, safe to hold that all those accused who have formed unlawful assembly whether formed in the morning, whether formed in the noon or whether formed in the evening, are all the authors of the offence. The difference is about the name of the Muslims against whose property mischief was committed. The offence was committed throughout the day, the names of the victims change which is not material to decide the guilt of the accused.

(iii) <u>Qua Sec. 435 and 436 of I.P.C.</u>:

[a] Arsoning or mischief by means of fire has been contemplated in Sec.435 and Sec.436 of the I.P.C. Here again, the mischief as defined u/s.425 needs to be kept in mind. The mischief by fire or explosive substance, attracts Sec.435 and Sec.436.

[b] As is clear from the V.C.D. and as is clear from the maps drawn from the panchnamas of site of offences, as is clear from the oral evidence of the PW, as is clear from the inquest panchnamas, the victims have suffered a lot because of fire and the bursting of gas cylinders in their properties. It is matter of common experience that how so ever poor a person is, he can now afford a gas cylinder in his house.

A-18 has confessed that about 23 fire arms had been collected by him for the riot, it has also been confessed that the said fire arms were also used even in bursting the gas cylinders in the Muslim dwelling houses. The situation of Muslim dwelling houses is clearly putting on record, the damage and destruction to have been caused by explosive and more particularly, the pieces of gas cylinders were also noticed in some of the panchnamas. Hence, it is clear that the gas cylinders were bursted in the houses of Muslims. V.C.D. proves burnt Muslim chawls which prove means of fire for commission of the offences.

[c] To bring home the offence u/s.435 of Indian Penal Code, requisite of Sec.426 needs to be proved which has been

proved. over and above the ingredient of Sec.426, it is also required to be proved that the mischief was caused by fire or explosive substances which is now a proved fact on record.

It is a matter of inference that the accused should have knowledge that fire and bursting of gas cylinder would cause severe damage to the dwelling houses, shops, carts, cabins, etc. and that their intention should also be to damage some property which has already been discussed herein above. In any case, the property damaged should be of value of so many times more than Rs.100/-.

[d] In the same way to bring home the guilt u/s.436 it is essential that the intention of the accused should be to cause destruction of any building and that such a building must have been used as human dwelling. Both these ingredients are additional ingredients for Sec.436 over and above, the ingredient to be proved for the offences u/s.435. That being so, it is now clear that the accused have also committed an offence u/s.435 and Sec.436 of the Indian Penal Code. These offences of Sec.435 and 436 have also been committed by the unlawful assembly. Here, the presence of the accused in a particular assembly is not material because, suffice it to hold that, he was a member of unlawful assembly as, there were in all, three occurrences and the unlawful assembly has committed offences against property, hurt, murder and attempt to murder in all the occurrences which have also been committed throughout the day.

(iv) <u>Qua Sec. 440 of I.P.C.:</u>

[a] To bring home the offence u/s.440 of the Indian Penal Code, the prosecution needs to prove that the accused made preparation for causing death or hurt or wrongful restraint and that then after, it was followed by mischief as defined in Sec.435.

[b] In light of the fact that in the Badarsingh Chali and other Muslim Chawls, the dwelling houses used for human dwelling were torched in the morning, in the noon and even in the evening. These dwelling houses were burnt knowing fully well that the Muslims were inside the house. Severe grievous hurt to an extent of attempt to murder, was caused to numerous Muslims like Razzak Bhatti, his sister who had ultimately succumbed to these serious burn injuries sustained by them. The accused can be inferred to have knowledge while torching the dwelling houses that this would hurt the person residing inside. In the same way, the crippled boy Maiyuddin was also hurt in his house, mother of PW-259 was also taken out from the latrine and was hurt there and was thrown in flames of burning rickshaw.

Over and above this, PW-198 proves damages to the Muslim chawls, PW-149 saw a big mob breaking the wall of Jawannagar and the mob unduly entering in the Jawan Nagar with deadly weapons like swords, scythe, iron rods, pipes, tins of kerosene, petrol, etc., PW-143 saw Muslim chawls being burnt, gas cylinders being burst in the houses of Muslims, his own car was used to break the wall of Jawan Nagar, the mob with weapons entered in the Jawan Nagar, PW-191 saw mob breaking the wall, scattering the things to pieces, destroying, damaging, beating and killing people, burning houses, etc.,

PW-229 proves the Muslim chawls to have been burnt, looted, ransacked and destroyed in the noon occurrence and PW-176, saw the Muslim chawls being burnt and many dead bodies were also burnt.

The accused could hurt these old, feeble or crippled persons for the reason that they were possessing and they have used deadly weapons carried by them at the residences of the Muslims and that, that being the situation the ingredient as required u/s.440 of the I.P.C. also stands proved. For the said reason, the offences u/s.427, 435, 436 and 440 stand proved to have been committed by the unlawful assembly throughout the day beyond all reasonable doubt.

[c] The formation of the unlawful assembly, the commission of the charged offences, to execute the conspiracy were instigated by A-37 and in fact, A-37 has abetted all these offences which were all done in pursuance of the conspiracy hatched by the accused. Considering this fact, and further noting the fact that the offences u/s.427, 435, 436 and 440 were committed by the unlawful assembly in the morning, in the noon and even in the evening, it would be easier to hold all those accused who were members of unlawful assembly either in the morning, or in the noon or in the evening for commission of these offences whereas, to hold A-37 guilty for the abetment provided to commit all the said offences.

[d] That being so, in all, the 26 conspirator accused of the unlawful assembly in the morning occurrence, A-4, A-28, A-30, A-53 and A-60 (additional five live accused) in addition to the 26 accused of the morning, in nutshell 31 live accused and

other dead accused have continued and discontinued in the unlawful assembly, but, the unlawful assembly has committed similar offences as discussed herein above in the same transaction hence, all these 31 accused are the accused who shall be punished for the commission of offences u/s.427, 435, 436 and 440 r/w. Sec.149 of I.P.C.

[e] It is therefore held that offences u/s.427, 435, 436 and 440 were committed by the unlawful assembly through its members wherein, the conspirators have abetted the offence. Hence, it is also punishable for the 27 conspirators while reading it with Sec.120-B of the I.P.C.

GUILTY :-

A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (all the 26 live accused of the unlawful assembly formed in the morning and A-37) are held guilty for the offences committed in the morning u/s.427, 435, 436 and 440 r/w. Sec.120-B of I.P.C. (27 live accused).

[f] BENEFIT :-

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (34 accused) are granted benefit of doubt for the offence u/s.427, 435, 436 and 440 r/w. Sec.120-B of I.P.C.

[g] GUILTY :-

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (Total 26 accused) are held guilty for the morning occurrence for the offence u/s.427, 435, 436 and 440 r/w. Sec.149 of I.P.C.

[h] GUILTY :-

A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44 and A-46 (Total 14 accused) are held guilty for the noon occurrence u/s.427, 435, 436 and 440 r/w. Sec.149 of I.P.C.

[i] GUILTY :-

A-1, 2, 10, 18, 20, 21, 22, 25, 26, 28, 30, 40, 41, 44, 52, 53, 55 and 60 (Total 18 accused) are held guilty for the evening occurrence u/s.427, 435, 436 and 440 r/w. Sec.149 of I.P.C.

[j] BENEFIT :-

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 live accused) are granted benefit of doubt for the charge u/s.427, 435, 436 and 440 r/w.Sec.149 of the Indian Penal Code.

[k] The accused shall be punished with imprisonment of either description for a term which may extend to 2 years or

with fine or with both for the offences u/s.427.

[l] For the offence u/s.435, they shall be punished with imprisonment of either description for a term which may extend to 7 years and shall also be liable for fine.

[m] For the offence u/s.436, they shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and shall also be liable for fine.

[n] For the offence u/s.440 they shall be punished with imprisonment of either description for a term which may extend to 5 years and shall also be liable for fine.

VIII-A. Point Of Determination No.8:

Ques. **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of offence, the accused have committed any offence against the public tranquility or not? If yes, which accused has committed the offence and which of the offences were committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?**

(With reference to Sec. - 153, 153-A, 153-A (2) of I.P.C., Sec. - 153 R/w. 149, 153 R/w. 120-B, Sec. - 153-A R/w. 149, 153-A R/w. 120-B, Sec. -

153-A (2) R/w. 149, 153-A (2) R/w. 120-B of I.P.C.)

VIII-B. Discussion On Point Of Determination No.8 :

[i] <u>Qua Sec.153 of I.P.C.</u> :

(a) As stands proved on the record, the act and omissions committed by all the accused who have hatched criminal conspiracy to do illegal acts, is itself an illegal act. The accused also have wantonly provoked each other and other Hindus present at the site in the morning of 28/02/2002 by giving exciting and provoking slogans, shouting the slogans, etc. A-37 has delivered provoking speeches in clear disregard to right of Muslims which were all undoubtedly can be infered to have been done to cause rioting. It is also infered that A-37 was knowing well that her provocation would cause offence of rioting and in fact on account of provocation by A-37 rioting was committed. this constitutes an offence u/s.153 of the Indian Penal Code.

(b) No sanction is required to prosecute for this offence. This is not the offence of the morning only as rioting was committed throughout the day, hence, the members of unlawful assembly in noon and in the evening (including A-4, 28, 30, 53 and 60) are also held guilty qua the offence r/w. S.149. In every occurrence, the assembly has continued provoking each other and other Hindus. Thus, in nutshell, all the 31 members of unlawful assembly did commit this offence.

(c) The illegal acts and rioting were in fact, done by the accused who were present in all the three occurrences who all were conspirators and the five others. The offence of rioting was committed in consequence of the provocation and that the provokers can safely be inferred to have been knowing that the provocation would cause the offence of rioting committed. The offence of rioting was in fact committed, hence, all of them shall be punished with imprisonment of either description for a term which may extend to one year or fine or both. They are :

(d-i) GUILTY :-

A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, A-62 and deceased accused (in all 27 live accused and other dead) are held guilty for the offence u/s. 153 of I.P.C. R/w. 120 B of I.P.C.

(d-ii) BENEFIT :-

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (34 accused) are entitled to the benefit of doubt u/s.153 r/w. Sec.120-B of I.P.C.

(d-iii) A-1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 26, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (31 accused) are held guilty u/s.153 r/w. Sec.149 of I.P.C.

[a] GUILTY :-

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (Total 26 accused) are held guilty for the morning occurrence u/s.153 r/w. Sec.149 of I.P.C.

[b] GUILTY :-

A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44 and A-46 (Total 14 accused) are held guilty for the noon occurrence u/s.153 r/w. Sec.149 of I.P.C.

[c] GUILTY :-

A-1, 2, 10, 18, 20, 21, 22, 25, 26, 28, 30, 40, 41, 44, 52, 53, 55 and 60 (Total 18 accused) are held guilty for the evening occurrence u/s.153 r/w. Sec.149 of I.P.C.

(d-iv) BENEFIT :-

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59, and A-61 (in all 30 live accused) have been granted benefit of doubt for charge u/s 153 r/w. Sec.149 of I.P.C.

(ii) <u>Qua Sec.153-A of I.P.C.</u> :

(a) It has been proved on record that the accused assembled in the morning including A-37 near Nurani Masjid on the date and time of the occurrence. Different accused came on that day

from different directions with deadly weapons in their hands, marching towards the Nurani Masjid which is the religious place and the place for worship of the Muslim community. While marching towards Nurani and after reaching Nurani the accused have given many slogans like 'cut, kill, kill the miyas, burn the miyas, not a single miya should now live,' etc. which was a spoken representation by all the accused as stands proved from the oral testimony of different eyewitnesses. By these slogans which were given solely on the ground of religion and because the accused belong to Hindu community who were ventilating their anger against the Muslim community because of the Godhra Carnage and since, the slogan shouting were meant to express ill will and enmity for minority community, the ingredients of the offence u/s.153-A stands proved to have existed in the fact and circumstances of the case.

(b) There cannot be any doubt that in fact and circumstances, there was no generation of feeling of anger, hatred, disliking and to take revenge against the minority. This kind of creation of the negative atmosphere is bound to disturb the public tranquility which has indeed disturbed the public tranquility at Naroda Patiya on that day.

(c) Such kind of conduct viz. commission of offences is undoubtedly prejudicial to the maintenance of harmony between the two community.

(d) As held, all the actions and omissions of the accused are clearly promoting enmity and hatred. The actual words uttered by way of slogan shouting and by A-37 in her provoking speech have been proved by the eyewitnesses to have been uttered by

the respective accused. This is the offence of promoting enmity between two groups on the ground of religion. No doubt whatsoever is created in the mind of the Court to hold that the offence has not been committed by the accused.

(e) While this offence was committed, even A-37 was present. Not only that, but, even A-37 has also uttered such words as has been discussed in the Part-3 where, conspiracy has been discussed, which have promoted enmity between the two communities tremendously and this has proved to be prejudicial to maintenance of the harmony.

(f) PW-236 has testified that A-37 told the mob of having seen corpses of Ramsevaks at Godhra and devotees of Ram should kill the Muslims, she provoked to cut them and to demolish and destroy the Masjid. This is the offence of morning hence the accused present in the morning only shall be held liable.

(g) The seriousness of this offence is to be assessed from the view point that India is a Secular State and that such act and omission and that too, by the elected member of the Constitutional Body needs to be viewed seriously. That being so, this Court is of the opinion that, it is necessary to examine whether the prosecution has obtained sanction or not.

(h) As has been discussed and decided, prosecution has obtained lawful and valid sanction to prosecute the accused No.1 to 62 except A-32 to prosecute them u/s.153-A of the Indian Penal Code. The offence seems to have been committed in pursuance of the conspiracy hatched, as the conspirators

had common design to create a situation where, the conspiracy hatched is executed in its full swing so as to see that the death toll of Muslims is risen and other offences against minority are committed. Commission of this offence is clearly a result of instigation and abetment by A-37. All the remaining 26 accused have formed unlawful assembly sharing the common objects in addition to execute the conspiracy. Their slogan shouting can be held to be adding fuel in fire, creating an atmosphere of disharmony, hatred and enmity based on religion. It is needed to be noted that the offences of murder, attempt to murder, of mischief and against public tranquility etc. were committed throughout the day hence all the 31 accused, members of unlawful assembly are held to have committed the offence r/w. S.149 of IPC. This offence is clearly committed as part of conspiracy and with reference to the agreement amongst the conspirators to do illegal acts by the members of unlawful assembly of the three occurrences.

(i) GUILTY :-

A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, and A-62 (27 live accused) are held guilty u/s.153-A r/w. Sec.120-B of the I.P.C.

They are punishable with imprisonment which may extend to three years, or with fine or with both.

(j) BENEFIT :-

A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14,

A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60, A-61 (34 accused) are granted benefit of doubt qua the charge of S-153-A r/w. Sec.120-B of I.P.C.

(k) GUILTY :-

A-1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 26, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (31 accused) are held guilty for (for the occurrence they were present) the offence u/s. 153-A r/w. Sec.149 of I.P.C.

(l) BENEFIT :-

A-3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 29, 31, 32, 36, 37, 43, 48, 49, 50, 51, 54, 56, 57, 59 and 61 (30 accused) are granted benefit of doubt for the offence punishable u/s.153-A r/w. Sec.149 of I.P.C.

(iii) <u>Qua Sec- 153-A(2) of I.P.C</u>.

(a) It has already been proved beyond all reasonable doubts that the attack was done at the Nurani Masjid by the accused, with the common objects they had, as the members of unlawful assembly which was also to execute the conspiracy. The Nurani Masjid was attempted to be burnt and destroyed. Upon proving that from the oral evidence, the extra judicial confession is permissible to be perused. As has been clear from the extra judicial confession of A-18, A-21 and A-22, the accused and the co-accused did attack Nurani Masjid and the offence of

mischief was committed by the accused while, attacking in the Nurani Masjid which is place for worship. This offence is of the morning. This act of physical violence and force, inside Nurani was done by the 26 conspirators as members of assembly in the morning which was abetted by A-37. The conspirators other than A-37 became members of unlawful assembly sharing the common objects which assembly has committed this offence under active abetment of A-37. No evidence that A-37 was present inside the Nurani Masjid is required to be proved, hence, the offence u/s.153-A(2) shall be held to have been committed by her also through her abetment. No doubt is left out that the attack on Nurani Masjid was result of her provocation and thereby abetting the conspirators in pursuance of the conspiracy to which she was a kingpin.

(b) A-18 confessed in the sting operation, which has been discussed in that chapter, at Part-3 of the judgment, that a pig was tied over the mosque, a tanker full of diesel was smashed into Nurani and dashed with the mosque, all was set on fire there.

(c) Confession by A-22 supports this fact in addition to the fact that saffron flag was unfurled (hoisted) and minarets of the mosque were broken, the mosque was damaged. The attack in Nurani, which is a worship place for Muslims, stands proved. A-22 also confesses to have committed the offence in company of other 8 – 10 boys.

(d) Perusing the testimonies of the eyewitnesses about the attack on Nurani, burning it, throwing stones on it, dashing tanker with it, etc. stands proved. It is then the extra judicial

confession is called upon in aid. It becomes clear that the attack on Nurani was not an individual act, but, it was an attack by the unlawful assembly and as a result of abetting by A-37.

(e) Since the attack on Nurani is of morning occurrence, the unlawful assembly formed at morning (26 accused) and A-37 are proved to be liable for the offence r/w. S.120B whereas the 26 members are held liable for the offence r/w. S.149 of IPC.

It therefore, stands proved beyond all reasonable doubt that, the offences u/s.153-A(2) r/w. Sec.149 of the Indian Penal Code, has been committed by the members of unlawful assembly assembled in the morning occurrence. The offence r/w. Sec.120-B of the I.P.C. is held to have been committed by the 27 conspirators, who all, shall be punished with imprisonment, which may extend to five years and shall also be liable to fine.

(f) GUILTY :-

A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, A-62 (totally 27 live accused) are held guilty for the offence u/s 153 -A (2) of I.P.C. R/w Sec. 120 B of I.P.C.

(g) BENEFIT :-

A-3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56,

A-57, A-59, A-60 and A-61 (totally 34 accused) have been granted benefit of doubt qua the charge u/s.153-A(2), r/w. Sec.149, r/w. Sec.120-B of I.P.C.

(h) GUILTY :-

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (26 accused) are held guilty for the offence punishable u/s.153-A(2) r/w. Sec.149 of I.P.C.

(i) BENEFIT :-

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 37, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (35 accused) are granted benefit of doubt for the offence punishable u/s.153-A(2) r/w. Sec.149 of I.P.C.

IX-A. Point Of Determination No.9:

Ques. **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of offence, the accused have committed any offence related to causing voluntarily hurt, causing hurt by dangerous weapons, voluntarily causing grievous hurt and voluntarily causing grievous hurt by dangerous weapons, or by means of fire, etc. or not? If yes, which accused has committed the offence and which of the offences were committed? Or was it committed by unlawful assembly or in pursuance of the**

conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec. - 323, 324, 325 and 326 of I.P.C., Sec. - 323 R/w. 149, 323 R/w. 120-B, 324 R/w. 149, 324 R/w. 120-B, 325 R/w. 149, 325 R/w. 120-B, 326 R/w. 149, 326 R/w. 120-B of I.P.C)

IX-B. Discussion On Point Of Determination No.9 :

[i] Sections 323 to 326 of the I.P.C. :

(a) Common points for determination has been framed qua the offences under sections 323 to 326 of the IPC for the reason that for all the said sections, the controlling section is 323. Section 326 is the section having highest gravity among all the charged sections under this head.

(1) Whenever the accused caused the grievous hurts contemplated under section 320 of the IPC and particularly in the facts and circumstances of this case, Clause 7 which provides for causing hurt results into fractures and Clause 8 which provides for any hurt which endangers human life, if is held to have been caused then section 326 of I.P.C. can be invoked.

(2) The grievous hurts has been defined as, which endangers life or which causes sufferer to be treated for a space of

20 days in severe bodily pain and/or makes him unable to follow his ordinary pursuit, such hurts would be covered under section 326.

It is also essential that such hurt must be caused voluntarily as envisaged in section 322 of the IPC wherein voluntarily causing grievous hurts with intention to cause such hurt has been provided. It is equally essential that such hurt must have indeed caused to the victim of the crime.

(3) Another essential ingredient is that such hurt must be caused by means of fire or by means of any instrument used as weapon of offence and which is instrument for stabbing or cutting and is likely to cause death.

(4) Section 323 to section 325 require that the cases should not have taken place on account of sudden and grave provocation. Moreover, there has to be intention to hurt and that victim must have suffered bodily pain or infirmity. It is also essential that the accused should have knowledge or intention sufficient to do act and omission prohibited under this section. The accused must know that during process of his act and omission the victim would be hurt.

(5) The appreciation of the entire evidence has been done keeping the principle in mind that except some special reasons are carved out on record, the injured should be believed.

Normally no injured would falsely involve any of the accused by leaving aside the real culprit of crime and his real assailants. Considering this, this Court has thought it fit and proper to appreciate oral evidence put forth before the Court.

(6) Another important aspect which has been continuously kept in mind is that in the peculiar facts and circumstances of the case, it is more prudent to give more emphasis to the ocular evidence brought on record by the prosecution. It is true that in normal circumstances the documentary evidence like injury certificate should be supporting the version given by the sufferer. But since it is a case of communal riots and noting the then situation of the city, noting the problems faced by the administration, situation of law and order, unusual and unprecedented rush in the general hospitals at that time and even further noting the fact that on account of ghastly crime committed on the victim, they were in numb condition in which situation the victims of the crimes might not have felt very conducive atmosphere to ventilate their grievance. Hence, injury certificates shall not be depended to decide on the question of credibility of the victim witnesses of the crime.

(7) In the facts and circumstances of this case, as has been discussed at Part-II and other parts of the judgment, in all there were mainly three different occurrences which have been classified by this court considering the time factors. These occurrences are - morning occurrences, noon occurrences and evening occurrences.

(8) The morning occurrences were from 9.30 AM to 11.30 AM /12.00 Noon. In this occurrence many victims were injured on account of police firing and even private firing, stone pelting, by means of setting the dwelling houses on fire and even by use of weapons. The testimonies of PW-104, PW-194, PW-73, PW-105, PWP-167, PW-169, PW-170, PW-174 and PW-177 reveal the probability of private firing having taken place near Noorani Masjid and opposite Noorani Masjid, Near the Gate of S.T. Workshop. The allegations of private firing is mainly against A-2, A-41, A-44, A-20 etc. which is also supported by sting operation, since firearms (23 in numbers) were collected for the attack and team of 29-30 accused was also prepared by A-18 and other leaders. Thus, in nutshell in the morning occurrence there were cases of simple to grievous injuries on account of private firing, weapons, stone pelting, etc. as has been proved on record. Even it is proved that stone pelting was continuously going on in the morning and attack and assault on Razzak Bhatti and his sister were done while they were inside their house while the entire house was torched by the members of unlawful assembly.

(9) Injured Safi, Bablu, Rajiyabanu, Yasin, Sahenazbanu, Shabana, Ahmed etc. have suffered simple to grievous hurts in the noon hours. The mother of PW-259 Tarkishbibi was also done to the death by burning her alive who was a crippled feeble old woman. She was hidden in the latrine and that she was picked up from there and was thrown in the burning rickshaw and she

died on account of said occurrence. Injuries sustained by them at that time were undoubtedly attempt to murder. In the noon, injuries were sustained by different witnesses which have all been discussed at length in Part-4 where injuries certificates have been discussed.

(10) Mother in law and brother in law of PW-231 were injured in the noon. Simple injuries were sustained during noon and in the evening by the victims mentioned at serial No.33 to 125 in the list of the injured victims of crime. There are many more occurrences which have taken place in the noon and which have been described in the earlier part of the judgment.

(11) In the evening Sahenajbanu, Aayshabanu, Afsanabanu, Sabir, Ahmed, Naeem, Farzana, Sabera, Yasin etc. have sustained simple to grievous hurts, which has also been discussed in the Chapter of injury certificates. In the evening, numerous victims have sustained simple to grievous injuries in Khancha occurrence. About twenty eight of such injured were taken to Civil hospital for their treatment.

(12) Many of the injured who were hurt in different occurrences during the entire day had to undergo treatment at the relief camp. The victims of Khancha occurrence were admitted at Civil Hospital. Some of whom were succumbed to the serious burns and other injuries sustained by them.

(13) In all the three occurrences, the injuries caused by

weapons was common as it is now proved facts. The accused did possess and did use deadly weapons on that day. Many of the victim witnesses who were admitted in the hospital, had taken treatment for long span. Many of the victim witnesses have been diagnosed to have sustained fracture. In the facts and circumstances of the case, those who were admitted in the hospital were for the span of more than 20 days whose case papers have clearly established on record that they have sustained severe bodily pain which would obviously not allow them to do their day to day work.

(14) It can safely be inferred that hurts sustained by the victim were intentional as the occurrence was linked with Godhra Carnage even by defence while giving suggestions to the P.W. during their cross examination. The accused were in knowledge that in the process the hurt would be caused to the victims. It has also been proved that the weapons used for commission of crime were blunt weapon, sharp cutting weapon, weapons used for stabbing etc. like swords, scythes, bacons, tridents. Even use of firearm has also been proved by oral evidence of the PW and therefore it is obvious that the accused were in know that use of such weapons are likely to cause death of the victim.

(15) It is not a case put up by way of defence that there was sudden and grave provocation. In the facts and circumstances of the case, when the accused were taking revenge for the death of Kar Sevaks in Godhara Carnage and when it has been proved on record that sufficient

preparation and pre-mediation and pre-consort were undergone among the accused, the question of providing any sudden and grave provocation by the victim is totally out of question.

That being so, ingredients noted stand proved hence, the guilt of the accused, stands proved when all the grievous hurts sustained by the victims were clearly endangering their lives.

(16) What is important to be noted here is that in the morning occurrence, noon occurrence and evening occurrence several victims were injured and they have suffered simple to grievous hurts. In the facts and circumstances of the case, burn injuries has to be treated as serious injuries as it has clearly been proved on record. As has come up on record, the victims were burnt after sprinkling or pouring inflammable substance like kerosene, petrol etc. The burn injuries were sustained by numerous victims as the record of the injury certificates speaks for itself. Sprinkling or pouring inflammable and then, to burn is conclusive point to prove intention and to ensure undoubted result of grievous hurt.

(17) If the deposition of different doctor witnesses are perused, it is clear that injury certificates and its contents along with medical case papers of different victims have been brought on record by them which have been satisfactorily proved by all of them. It is too clear on record that victims were beaten, hurt, injured in the communal riots. The victims have also sustained burn

injuries, stab injuries, injuries by blunt weapons, by sharp cutting weapons, as discussed. Some of them have sustained fractures, some of them have sustained bullet injuries and some of them have suffered injuries up to muscle deep. The doctors have opined that the burn injuries and other injuries sustained by the victims were fresh injuries which link it with the riot and that the possibility of such injuries, as has been opined by the doctors for the burns injuries to be sufficient to cause death in the natural course is self speaking.

(18) It is true that there is no recovery or discovery of weapons used in the offence except in some exceptional circumstances. It is lacuna of the investigation, benefit of which cannot be fetched by the accused. Many of the injured have given history of their injuries specifically mentioning that they were hurt in the communal riots at Naroda Patiya. This clearly links the occurrence of riot with the injuries sustained by the witnesses. The testimonies of the victim witnesses or their family members are supported by doctors to prove that the victims have sustained simple to grievous hurts on the date of occurrences.

(19) It is proved that about 125 eye witnesses or their relatives have sustained different kind of injuries ranging from simple hurt to grievous hurt and attempt to murder.

(20) There is clear link and positive evidence about the presence and participation of identified and named accused at the site of offence. No doubt whatsoever has

been created about the persons and participation of the accused at the time of offence. It is rather proved fact that accused named and identified in the company of thousands of rioters were present at the site and have actively participated in the communal riots that broke out on that day.

(21) The intention can clearly be read in the mind of the accused through their conduct who all were settling their accounts with Muslims as Kar Sevaks were done to death at Godhra. The accused have shown criminal force with intention and knowledge about the outcome of their act and omission. It is proved that they had common object to commit offences punishable under the Indian Penal Code like offence against human body, offence against property and offence relating to religion etc. It is also now proved fact that the conspirators like A-37 have abetted the commission of the offences by their abetment.

(22) The evidence on record clearly shows that the accused who have been held guilty to have formed unlawful assembly and to have become members of the unlawful assembly are responsible for committing the offence under the four sections under discussion in this point.

(23) Oral evidence, documentary evidence and circumstantial evidence on record are sufficient, positive, cogent and truthful to prove that commission of offences under section 323 to 326 was by the accused, against the victims as stand proved beyond reasonable doubt.

(24) Injuries sustained by victims was by means of fire as there are numerous cases of having sustained burn injuries. The occurrences of torching dwelling houses, carts, cabins, shops of Muslims have been clearly proved on record which get strong support upon viewing V.C.D. prepared by I.O. No.2. The injury certificates reveal stabbing injuries, head injuries, burn injuries, CLW, muscle deep wounds, fractures and admitting of victims in the hospital who had to remain in the hospital for months together.

(25) Common modus operandi adopted by the accused was to use sharp cutting instrument, use blunt instrument and committing offence by means of fire and cause simple to grievous hurts to Muslim victims in the ghastly attack with the use of weapons and inflammable substance etc. are all very much on record. All the occurrences were endangering human lives. It can safely be believed that the accused were in know of the fact that death is likely to cause because of their commission of offence on account of the fact that the offences were result of pre-planning and preparation. The intention of accused to hurt can never be doubted, rather it is proved facts.

(b) There is no material on record, more particularly by cross examining the doctors PW, which can shake the foundation lead by the victims and even doctors witnesses in the examination in chief by proving injury certificate and injury sustained by different victims.

(1) It is very much clear on record that the offences

committed during entire day were in one common transaction.

(2) In all the three occurrences viz. morning occurrence, noon occurrence and evening occurrence there are cases of grievous hurts sustained by the victim witnesses. In all the three occurrences there are numerous cases wherein victims witnesses have sustained fractures, had to be hospitalized for treatment who then had to remain in the hospital for very long time. In all the three occurrences many victim witnesses have also sustained fractures as is clearly proved on record. The prosecution has brought sufficient and satisfactory evidence on record to establish that the offences under sections 323, 324, 325 and 326 were committed in all the three occurrences, inspite of the fact that members of unlawful assembly have at times joined and at times discontinued their membership. It is proved that the author of the offences under discussion is the unlawful assembly.

(c) In the facts and circumstances of the case, commission of offences under discussion must have been committed which stands proved beyond all reasonable doubts.

(d) Since the offences were committed by unlawful assembly it is not essential to count individual acts of the accused. In the same way, since offences were committed on account of instigation, provocation and abetment and that when it stands proved that offences were committed in pursuance of conspiracy the individual role is not very important. What is important is the act and omission of the accused conspirators.

(e) The accused have invoked principle of joint liability. It is therefore, essential to look upon entire commission of offence as a joint act of the accused who were present and who have participated in the offence. Participation of accused could be by abetting the offence as well. Participation could also be by remaining present at the site and by doing specific overt act.

In these facts and circumstances, being at the site with weapons is also overt-act as it is matter of common experience that in day to day life, nobody comes out of the house keeping deadly weapons in possession and more particularly publicly.

(f) An important aspect needs a note that the entire day was different parts of one common transaction.

(g) When in all three occurrences, the offences of Section 323 to 326 were committed, when in all three different occurrences, grievous hurt by firing, by weapon and the injuries wherein the witnesses have sustained fracture have been committed, it is clearly proving the fact that the injuries as mentioned under Section 320 stands proved firstly for the reason that most of the injured had to be admitted in the hospital for very long time. In the background, that the witnesses have tremendously suffered loss; mentally, socially, economically and physically, their agonies would not know any limit and their pains are boundless. Severe bodily pain to such victim of ghastly crime where they have attempted to be burnt alive and to be done away can be held to have been proved as grievous hurt.

Clause - 7 and 8 of Section 320 are proved in the facts of the case which are related to fracture or dislocation of bone which upon perusal of the injury certificate, many injured have suffered.

Many injured were thrown in the flames of fire who were voluntarily hurt by means of fire.

As discussed in Clause 8 of Section 320 since the injuries suffered by the injured were obviously endangering their life and when they have to be hospitalized for a long span of time, it is very obvious that at least during the 20 days, the victim must have undergone severe bodily pain and were unable to follow their daily pursuits. That being so, it is held that in the morning, noon and evening, the offences which resulted into simple hurt to grievous hurt to different injured victims, did take place.

(h) Every accused who was member of the unlawful assembly was sharing common object to do offences against human body of the Muslims residing at Naroda Patiya. It is therefore safe to infer that they did cause grievous hurt, voluntarily to the Muslim inhabitant there. Their action of throwing people in the flames of fire and possessing and using deadly weapons speaks of their intention of causing grievous hurt to the injured who were really made to suffer grievous hurt as has been defined u/s. 326 and as can be understood from Section 322 of I.P.C. voluntarily causing grievous hurt with intention to cause grievous hurt and the accused really does so.

(h-1) PW-70 and 191 testify that Peeru, Khalid,

Mohammad and son of Hamidali were injured in the morning occurrence, PW-76 was injured in firing, PW-192 saw 5 Muslims to have been injured in the firing in the noon occurrence, PW-227 testifies that he sustained injuries in the morning PW-191 and his children had to take long treatment for their grievous hurt. In all 125 persons have sustained injuries, the details of all of them have been narrated in Part-4 of the Judgment, hence, need not be repeated.

(i) In none of the case above, any reasonable doubt has been brought on record that the occurrences took place on account of sudden and grave provocation. On the contrary, it is the case of assault and attack with pre-consort and pre-mediation by the majority of on the minority. That being so, the facts and circumstances does not reveal any proviso carved out under Section 334.

(j) Considering the discussion as above, this Court humbly, but firmly believes that in the morning, noon and even in the evening, all these accused who have formed unlawful assembly have committed the offences u/s. 323 to 326 of IPC.

They all shall therefore be punished with imprisonment of either description of a term which may extend to one year or with fine upto Rs.1000/- or both (for Section 323).

They are punishable u/s. 324 with imprisonment of either description for a term which may extend to three years or with fine or with both.

For the offences u/s.325, they shall be punished with

imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine.

In the same way, for the offence u/s. 326, they shall be punished with imprisonment of life or with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

(k) At the cost of repetition, it is herein clarified that in the morning, following accused were forming unlawful assembly. **A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (26 live accused)**.

(l) The points needs to be noted that A-1, A-2, A-10, A-21, A-22, A-25, A-26, A-41 and A-44 are the 9 accused who were present in unlawful assembly constantly, continuously and consistently. Meaning thereby they were present in the morning occurrence, in the noon occurrence and even in the evening occurrence. Certain other accused have also participated in the crime over and above it.

(m) A-37 is the person who has instigated to commit the crimes, who has provoked and abetted to form unlawful assembly to execute conspiracy and to give effect to the common object and intention the accused had in their mind. Hence, A-37 shall be held liable for the commission of offence under all the four sections to be read with section 120B of IPC.

(n) Remaining accused have become member of unlawful assembly. But at the same time, they were conspirators also. That being so, they are held guilty for charged offences to be

read with section 149 as well as to be read with section 120-B.

(o) A-4, 28, 30, 53 and 60 were only members of the unlawful assembly, who were, since not conspirators, their offences shall not be r/w. Sec.120-B of I.P.C. but, shall be r/w. Sec.149 of I.P.C. alone.

(p) However, certain accused were neither conspirators nor have become members of unlawful assembly and hence all such accused needs to be granted benefit of doubt.

(q) As discussed herein above, all the four offences were committed in all the three occurrences. There is no need to distinguish the occurrence rather all those accused who were present in any of the occurrences shall be answerable for the offences to be read with section 149 for their offence of commission as member of unlawful assembly and to be read with section 120B for those who were conspirators.

(r) Final Conclusion :

[i] GUILTY :-

A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 & A-62 (31 live accused) are held guilty for (for the occurrence they were present) commission of offences punishable u/s.323 to 326 r/w. Sec.149 of the I.P.C.

[ii] <u>BENEFIT :-</u>

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 live accused) are held to be entitled to benefit of doubt u/s.323 to 326 r/w. Sec.149 of the I.P.C.

[iii] GUILTY :-

A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58, A-62 (27 live accused) are held guilty for commission of offences punishable u/s.323 to 326 r/w. Sec.120-B of I.P.C.

[iv] BENEFIT :-

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60 and 61 (34 live accused) are held to be entitled for benefit of doubt u/s.323 to 326 r/w. Sec.120-B of I.P.C.

X-A. Point Of Determination No.10:

Ques. **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence any of the accused has done any offence with intend to prevent child being born alive or to cause it to die after birth, or not? If yes, which accused did that offence? If no, any other offence has been committed with reference to the incident of slitting open**

stomach of the pregnant woman or not? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec. - 315 of I.P.C., 315 r/w. 149, 315 r/w. 120-B or any other offence r/w. 149 and or 120-B)

X-B. Discussion On Point Of Determination No.10 :

[i] Incident Of Kausharbanu And Answer To Charge U/s. 315 of I.P.C.:

(a) The first and foremost submission is to be dealt with is about the probability of such occurrence. As has come up on record and as has already been discussed, on the date of the occurrence, an occurrence of slitting the stomach of a pregnant woman has been highlighted by filing a complaint and by narrating the facts in the complaint filed which is on record at Exh.1776/22, the record of C-Summaries brought from the Court of Learned Metropolitan Magistrate. This complaint has not been further persuaded or say was not investigated, but the fact remains that such complaint has been filed which brings a strong circumstance, remained absolutely unchallenged, on the record of the case of probabilizing such occurrence. It is therefore, held that such occurrence is probable. There is nothing unlikely to happen if the blower is giving exact blow and is an experienced person to do so. In fact, the concept of caesarean in gynecology is nothing but, similar process in

sophisticated surgical refined way. If the pregnant woman is in lying down posture by fall or because of assault and if the blow of a sword is given in vertical position, it can cut layers of stomach and even of uterus hence, it is not improbable to occur. The stomach of a pregnant woman passing through the stage of full termed pregnancy used to be thined down because of stretching all the while.

(b) This Court is aware that what is being referred by the Court is merely a complaint and the complainant has not been tried before the Court Exh.1776/22). This Court does not believe the complaint to be the whole truth, but at the same time, this complaint brings on record a strong circumstance of the cruelty which took place on the date of the occurrence on even a pregnant woman.

(c) This complaint would only ensure the Court that such occurrence has been complained of and it is not imaginary. Had there been malice in filing the complaint at Exh.1776/22, the complainant would not have disappeared as has disappeared. This complainant is not even a prosecution witness which shows that the complaint has not pursued further.

(d) It is already known and has been proved that several persons were missing and unfound after the riot, several persons have reduced to grilled meat, and several persons have reduced to ashes.

(e) The investigation and more particularly the previous investigation is held to be unreliable, improper, inept and aimed not to highlight certain accused or not to book the case

against certain accused.

(f) The postmortem notes, which were not of identified dead bodies, which were later on given name by PW 285 is held to be not credible record.

The dead bodies with the Civil Hospital were of about three massacre, massacre of Naroda Gam, massacre of Naroda Patiya, massacre at Gulmarg Society. Thus, the dead bodies which were brought for postmortem were from two different police stations. The 68 P.M. are on record which are of unknown persons but, are of the dead bodies sent by Naroda Police Station and are of the victims of this case as proved.

In case of the P.M. of the identified dead body, reliance can be placed but, for P.M. of unknown and unidentified dead body, no reliance can be placed hence, only oral evidence, if found reliable, has been depended upon.

(g) Even though normally keeping record of P.M. is an official act and there is presumption of its proprietary but in the case at hand, for the purpose of securing compensation, naming of certain dead bodies and the record of burial receipts were given to the relatives of the deceased because that must be administrative condition precedent for granting compensation. The relatives of the deceased being in severe need of financial help, must not have been left out with any other option. This can be inferred by the Court. In any case, the 68 P.M. Notes kept in the record of this case and since these dead bodies were taken from Naroda Police Station, it can safely be inferred that in any case, these unidentified dead bodies were

of Naroda Patiya massacre. The only point is over and above these sixty eight deceased as noted, numerous more have also died. There are many complaints which have not been followed up either because of fear, migrations, passage of time or lack of trust in the system.

(h) The Civil Administration was required to name the P.M. Notes lying as P.M. of unidentified dead bodies so as to oblige the relatives of the deceased and to clear their own record. Hence after many years of the massacre, PW 285 has haphazardly given name to any dead body of any of the deceased, hence that record is in a way polluted record and cannot be depended upon. In the same way, the burial receipts etc. are also not completely dependable record.

(i) The issue of Kausharbanu has remained a highly debated issue. After eight years of the occurrence when the trial has been completed. In the facts and circumstances of the case, this Court is left out to draw judicial inference from the entire facts and circumstances of the case, that homicidal death of Kausharbanu was caused with all necessary ingredients u/s.302 of I.P.C. The points below need consideration.

(1) As discussed in the chapter of Sting Operation, A-18 is noticed to have been confessing about his great deeds of attacking and killing Muslims and more particularly the pregnant Muslim woman on the date of the occurrence.

The conversation of the Sting Operation is held to be scientifically proved, true, voluntarily and legally acceptable confession of A-18 which can safely be acted

upon. How this evidence is readable in evidence has been discussed at length in the chapter of Sting Operation discussed in the Part-3 where conspiracy has been discussed and decided. The same need not be repeated suffice it to say that the Sting Operation is genuine, dependable and credible, voluntary extra-judicial confession made by A-18, hence the same is believed.

(2) This Court is of the firm opinion that PW 158 is one of the most truthful witnesses from whose evidence it stands proved that Kausharbanu was with him all alive, till the happening of the evening occurrence after about 06:00 p.m. at *khancha.* It is also very clearly establishing on record from the oral evidence of this witness that Kausharbanu died homicidal death in the evening occurrence at the site.

(3) PW 228 is a cousin brother of Kausharbanu, who was only a boy aged 14 years of his age on the date of the occurrence and who has only studied upto Standard 3rd . This small boy speaks of attack by A-18 on pregnant Kausharbanu at the evening occurrence, he talks about death, her stomach was slit, fetus was taken out and then she and the fetus were burnt there. The Court has no hesitation in believing this witness as well remembering that his testimony is bound to be perception of 14 years old boy then hence, needs to be appreciated accordingly.

(4) PW 225 is the husband of Kausharbanu, the husband of Kausharbanu is also not highly qualified or educated person, he speaks about the fact that at about 4 p.m.,

somebody attacked Kausharbanu at Jawan Nagar khada by a sword blow. This witness does not say whether that blow was effected, was successful, has resulted into any kind of injury on Kausharbanu or not because he fairly admits that he immediately ran away. This PW is also truthful PW.

There is no other oral or documentary evidence or even circumstantial evidence to hold that Kausharbanu died homicidal death or even was injured at Jawan Nagar Khada at about 04:00 p.m.

(5) On the contrary, PW 158 states that she was with him until the occurrence. PW 228 states that he has seen her at the hall in the evening. Assembly at hall is after the occurrence of Jawan Nagar Khada. Hence it stands clear that she was alive, heal and hearty even after the Khada occurrence.

There is no witness stating about the death of Kausharbanu at any other place except at the evening occurrence and that PW 228 has admittedly seen her alive walking herself coming out from the hall. PW 158 was accompanying Kausharbanu through out till the evening occurrence, this proves that until the evening occurrence Kausharbanu was able to walk herself and was obviously alive, fit and fine.

(6) While appreciating the oral testimony of PW 228, it should be kept in mind that at that time, he was 14 years old boy and his understanding about the life would

obviously quite limited.

(7) Neither PW 228 nor A-18 are expert of gynaecology, hence their version related to occurrence which is closely associated with the subject of gynaecology is to be understood as their personal perception of the occurrence, but it undoubtedly proves that occurrence of ghastly attack on Kausharbanu has taken place.

(8) On the aspect of probability of the occurrence, in addition to the circumstantial evidence emerged from the complaint narrated above, the concept of caesarean needs to be kept in mind which shows that the occurrence as narrated by A-18 is not unlikely. In fact, the occurrence was much close to caesarean. It is known that sword cannot be less than any knife and with the help of sword also, the caesarean is possible.

(9) As has been concluded by this Court, PW 225, 228, 158 and even A-18 in his Sting Operation are all speaking truth, but the only point is that PW 228 and A-18 are talking of the occurrence which is having connection with subject of gynaecology.

(10) Unfortunately, the prosecuting agency has not examined any gynaecology expert to prove the probability of the occurrence, the investigating agency has not investigated on the scientific possibility of happening of the occurrence, the previous investigator has also not collected any evidence and examined the probability, the defence has also not examined any gynaecology expert to

decide about the gynaecological improbability, the P.M. record is polluted and is not reliable, the burial receipts and P.M. reports are prepared with different aims and are not appearing to be a pure record. Support is available from the oral or evidence to the occurrence of homicidal death of Kausharbanu. Reliance has to be placed only on circumstantial evidence as well, as has been emerged on record.

(11) A-18 is neither experienced nor trained gynaecologist who can do caesarean at the site with the help of sword, but the gist of his conversation is that he killed a pregnant woman by sword blow and while killing her, it is obvious that some piece of flesh must have been on the tip of the sword which A-18 seems to have perceived to be fetus.

(12) PW 228, the 14 years old cousin of Kausharbanu is also not an expert. What he has seen, is his experience through his senses viz. his eyes that he saw attack on Kausharbanu by A-18. Such an attack was on the stomach of Kausharbanu.

Kausharbanu was a pregnant woman of full term or near to full term as emerges from the oral evidence of her husband, PW 225 who has also deposed that she went to her parent's house for delivery. This goes with social custom wherein a woman comes to the parental home for delivery and thus, the brilliant probability and possibility was that of full term pregnancy of Kausharbanu or atleast near to full term pregnancy of Kausharbanu.

(13) Now, therefore from oral evidence of PW 228 and confession of A-18, it, becomes very clear on record that when A-18 attacked Kausharbanu, by giving sword blow on her stomach. The Kausharbanu as has been held was passing through the stage of full term pregnancy or near to full term pregnancy and that it was almost admitted position from the oral evidence of PW 225 and PW 158 that right from the noon, with the physical exercise alongwith tremendous mental stress, Kausharbanu was moving here to there.

PW 158 and PW 225 focus on the tremendous hardship suffered by the victims on that day. PW 225 focuses on the fact as to what a mental agony Kausharbanu must have undergone when the sword blow was on Kausharbanu at khada.

It is different that the same was not successful and therefore, mental agony. Because of this background, she must be tremendously exhausted, tired, totally lost and because of this background, successful attack by A-18 must have resulted in her falling down on earth and becoming unconscious. The attack by A-18 was very much on stomach of Kaushar as is very clearly proved on record, but it cannot be believed that A-18 could take out fetus from the body because that can be done by a trained gynaecologist or very experienced person and that not even co-incident can be accepted as probability for taking out fetus from the body of pregnant woman, however, the flesh which came out seems to have been perceived by A-

18 and all concerned as fetus from her body. In nutshell, it is held that there was successful attack by A-18 on pregnant Kausharbanu who then fell down, who then became unconscious, the attack resulted into injuries and then ultimately she was burnt there at the site and thus her homicidal death was committed alongwith fetus in her body. Thus, A-18 is held to be author of homicidal death of Kausharbanu. This commission of offence in the opinion of the Court has been proved to be as member of unlawful assembly and as abetter.

(14) From the judicial experience, judicial wisdom and relying upon the principle of probability, the occurrence, its cause, its effect, the natural conduct of A-18 etc. following points can safely be concluded.

(i) PW 158 is a truthful witness. From him, it becomes clear that Kausharbanu was alive until the evening occurrence and was with her mother in the company of PW 158. Her homicidal death was committed at the site of evening occurrence at Khancha.

(ii) PW 228 saw her coming out from the hall in fit condition, at which point of time, she was walking, this shows that Kausharbanu was not even injured before the evening occurrence.

(iii) PW 225, husband of Kausharbanu saw her at khada at about 04:00 p.m., the sword blow risen to be given to her was not successful, PW 225 has not waited to look at the effects of the said sword blow

on Kausharbanu.

(iv) Kausharbanu came to *khancha* water tank incident where PW 158 and PW 228 saw her alive, who both are credible witnesses and are truthful witnesses.

(v) The conversation of the Sting Operation in the voice of A-18, and as proved from the oral evidence of PW 322 and other witnesses like FSL expert, CBI officer, Mr.Raju, is true, voluntary and genuine.

(vi) No evidence is on record to prove motive of A-18 to kill Kausharbanu in specific. His immense hatred for Muslim is exhibited in his genuine revelation in the Sting Operation, but the said was not to kill some pregnant woman and to take out her fetus.

(vii) Previous conduct of A-18 of coming to water tank area, being armed member of the mob of miscreants and of unlawful assembly stands clearly proved on record. This shows that he was present with sword in his hand at *khancha*.

(viii) Nothing is unlikely for that day or nothing is improbable with the passion and commitment A-18 had on that day in doing away Muslims and whatever he has stated in Sting Operation is truth.

(ix) When PW 225, 228, 158 have passed the test of credibility and when the extra-judicial confession of A-18 is in tune of that and when it is supported and

proved by oral evidence of PW 322, it all stand proved. The occurrence passes test of probability.

(x) As discussed above, burial receipt is not conclusive proof, non-availability of dead body of Kausharbanu is as well probable, hence no corroboration be available from the P.M. of unknown dead bodies. Dead body of Kaushar was not identified.

(xi) The most important topic of the entire occurrence is the perception of A-18 and perception of PW 228. A-18 is not a gynaecologist who would be knowing the art of caesarean nor he had any intention of killing a pregnant woman nor he seems to have specifically made preparation for this. In fact, as emerges on record, coincidentally his attack was on this pregnant woman, hence his act and omission is falling within the category of committing homicidal death of Kausharbanu, it is not proved that it was committed by any of the accused with intention or mens rea as is required to prove the offence u/s. 315 of the I.P.C.

(xii) This Court was discussing on the human perception, coming back to that point, since A-18 was not experienced and trained person of doing or operating caesarean on pregnant woman, it cannot be expected that he would bring out the fetus on the point of sword, but the fact remains that he does not speak lie, he reveals true story and that true story is to be seen with the lenses of his perception. Now,

the lenses of his perception guide this Court that he did an attack on the pregnant woman viz. Kausharbanu by sword which was successful attempt, in this attempt, he could injure Kausharbanu on her stomach because of which, piece of flesh which must have come out was perceived by A-18 as fetus. When A-18 as a matured man understood or perceived piece of flesh as fetus, what to talk about only 14 years boy who witnessed the incident with his little understanding about life about the position of pregnancy, about the caesarean and many more such things, thus PW 228 is speaking truth like A-18 is also speaking truth.

(xiii) The offence was not an individual act or committed in isolation. It is apparently joint act of the accused in the evening occurrence hence, the assembly of evening occurrence is to be held liable for the offence r/w. Sec.149 of I.P.C.

(xiv) It is also on account of abetting by the conspirators hence, guilt to be read with Sec.120-B of I.P.C. as well.

(xv) The charge at Exh.65 is for 96 murders, this is one among the said murders. This murder is of the evening occurrence. Since the charge is of 96 murders and with inclusion of this murder, nothing beyond the charge stands proved hence no prejudice is likely to be caused to the accused if on the fact, this murder is also taken into consideration to

conclude on guilt of the accused. This is one of the murders among numerous murders proved in the evening occurrence.

[ii] Section 315 :-

(a) The essential ingredient of the offence is the commission of act or omission by the accused to prevent the child birth and that the act of the accused must be with an intention to prevent the child from being born alive. The evidence of PW-225 and 228 have been believed by this Court. Reading the same with the evidence of PW-158, it stands proved beyond all reasonable doubt that A-18 has killed deceased Kausharbanu who was pregnant at the evening occurrence when unlawful assembly was present and participating in killing of Kausharbanu to its full. There is no material on record to prove that while Kausharbanu was attacked by A-18, he had an intention as required under S.315 of IPC. His intention was to kill any Muslim and to attack any Muslim. Kausharbanu was attacked, but there is nothing to believe that attack was not at all an attack on a Muslim person. It is certainly homicidal death but that would fall u/s 302 of I.P.C. as without intention of A-18 to kill Kausharbanu only because she was pregnant, it cannot be held that the offence u/s 315 stands established.

All other accused as members of unlawful assembly in the evening shall be held guilty. All the conspirators shall also be held guilty for abetting this murder. As a result, though A-18 and other accused shall be held liable u/s 302 r/w. relevant sections of I.P.C., it is difficult to hold them liable for the charge u/s 315. of I.P.C.

(b) While concluding both the truths which were their perceptions of the occurrence, the outcome which is drawn by inferring from the facts and circumstances on the record and more particularly, the oral and documentary evidence on record, is the homicidal death of deceased Kausharbanu was committed by A-18 as conspirator and member of unlawful assembly, the fetus could not be brought out, Kausharbanu died there alongwith fetus in her body, Kausharbanu and unborn child were burnt there, the attack was at the site of *khancha*, the attack was by A-18 on the stomach of Kausharbanu, the attack was successful, coming out the flesh is an obvious result, except the P.M. of identified dead body, none of it is reliable, the death of Kausharbanu was resulted at the site itself and that the offence against A-18 and others stand proved which for want of mens rea as required u/s. 315 of IPC is held to be of homicidal death and with the intentions and motives the A-18 and other accused had, it was a case of murder of Kausharbanu proved by prosecution quite successful.

Hence this Court is inclined to hold that the murder of Kausharbanu was committed in the evening occurrence at the site of the offence because of attack of unlawful assembly through A-18 on her stomach. She was then after burnt alive alongwith her fetus.

BENEFIT :-

A-18 and others are given benefit of doubt for the charged offence u/s. 315 of IPC. Guilt of commission of murder of Kausharbanu by the assembly u/s. 302 of IPC

is successfully brought home.

(c-1) GUILTY :-

The members of unlawful assembly present in the evening occurrence are held guilty for Sec.302r/w. Sec.149 of I.P.C. for the murder of Kausharbanu only.

They are A-1, 2, 10, 18, 20, 21, 22, 25, 26, 28, 30, 40, 41, 44, 52, 53, 55 and 60 (18 live accused).

(c-2) BENEFIT :-

A-3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 27, 29, 31, 32, 33, 34, 36, 37, 38, 39, 42, 43, 45, 46, 47, 48, 49, 50, 51, 54, 56, 57, 58, 59, 61 and 62 (live 43 accused) are granted benefit of doubt for the offence u/s.302 r/w. Sec.149 of I.P.C.

(d) GUILTY :-

A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58 and 62 (27 live accused) being conspirators are held guilty for the offence u/s.302 r/w.120-B of I.P.C. for murder of Kausharbanu only.

(e) BENEFIT :-

A-3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 23, 24, 28, 29, 30, 31, 32, 36, 43, 48, 49, 50, 51, 53, 54, 56, 57, 59, 60, 61 (live 34 accused) are granted benefit of

doubt qua charge of Sec.302 r/w. Sec.120-B of I.P.C. for this murder only.

(f) Accused No.1 to 62 (except A-35 since abated) are granted benefit of doubt qua charge of Sec.315 r/w. Sec.149 and Sec.315 r/w. Sec.120-B but, the 18 live accused are held guilty u/s.302 r/w. Sec.120-B, Sec.302 r/w. Sec.149 has been held to have been proved.

(g) <u>Final Conclusion</u> :

SINCE THIS IS ONE OF THE MURDERS OF THE EVENING OCCURRENCE, THIS MURDER SHALL BE TAKEN INTO CONSIDERATION WHILE DEALING AND DECIDING THE POINT OF DETERMINATION NO.13 ON MURDERS.

XI-A. Point Of Determination No.11:

Ques. **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence any offence of rape or gang rape by victimizing any Muslim woman was committed or not? If yes, by which accused? Whether any occurrence of assaulting or using criminal force to any Muslim woman or small Muslim girls with intent to outrage her modesty has taken place or not? If yes, by which accused?**

(With reference to Sec.-354, 376 and 376(2) (g) R/w. Sec.-34 of I.P.C.)

XI-B. Discussion On Point Of Determination No.11 :

[i] Qua Sec- 354, 376 and 376 (2) (g) of I.P.C.:

(a) Introduction :

It is settled position of law that in the tradition bound and non permissive society of India, normally every woman would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity, her matrimonial life or her image in the society had even occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including her own family members, relatives, friends and neighbours. If a woman is married, the fear of being taunted by husband and in-laws would always haunt her. The natural inclination would be to avoid giving any publicity to the incident lest the family name and family honour is brought into controversy. In case the victim of such crime died, then, the natural inclination of the parents would be to do not mention the incident at all as it would have its ugly shadows on the lives of the surviving children and even there is constant fear of social stigma on the family in case of such occurrence being quoted.

(b) In the facts of this case many parents, kith and kin, neighbours and relatives and even husband of the victim have quoted the incident of outraging the modesty of Muslim

women, rape on Muslim women and even gang-rape on Muslim women including their daughter, wife, sister, etc. This Court has no hesitation to hold that in light of what has been discussed herein above at point No.A, the prosecution witnesses should be held to be worthy of all the credence qua their testimony on this point except when the PW himself has not seen the occurrence but, has only heard the occurrence since, 'no personal knowledge - no evidence'. Normally in case of the deceased daughter, why the parents would spell about any such incident to had been occurred with their daughter falsely - it is different that in some cases, they have only hearsay knowledge. It would be most unjust to perceive that to falsely involve the accused, that too, after passage of so many years, the parents or relatives would be out to put up a case of outraging the modesty or rape on the woman of their family viz. to say something about their own daughters, wives, sisters, etc. which would surely be a black dot and a dent on the chastity of that woman who is so near and dear to the PW being a family member, which would not haunt her till she survives.

This Court is of the view that the principle of '*hearsay evidence is no evidence*' should also not be sacrificed.

It is even notable that in many of the cases, only the incident has been spelt before the Court and it has been fairly conceded that who were the tormentors is not known to the witnesses. This fairness adds strength to the credit which the PW already enjoys by virtue of the fact that he or she relates the incident of his own daughter, sister or wife.

(c) PW-74, 112, 162, 142, 203 and 158 and others have testified that at the site of the evening occurrence at the khancha the women were being raped, their clothes were being torn, they were made naked and rape, gang rape were committed on victim Muslim women and that their modesty was outraged. Here, none of the accused is implicated by the PW. The witnesses were found truthful on this aspect. Hence, this general version about small Muslim girls and for Muslim girls in general, is found to be truthful and credible. The instances narrated by some of the witnesses including PW-205 show that the offences of rape, gang rape and even outraging the modesty of women did take place on that day. This proves the commission of offence u/s. 354, 376 and 376(2)(g) of IPC etc.

(d-1) PW-158 is the husband of PW-205 and that he testifies about outraging the modesty (forcefully snatching here and there) of his wife at the site by the attackers.

(d-2) Vide testimony of PW-106, PW-203, 247 and 257, it becomes very clear that PW-205 Zarina wife of PW-158 was attacked by four men and that she was gang raped there.

(d-3) PW-205 is herself a victim. She testifies that four men had attacked on her with the help of sword, string of her petticoat was cut off and that a severe sword blow was given on her hand by the attackers. Having nakeded her, she was gang raped.

(d-4) In light of the foregoing evidence on record, this Court firmly believes that PW-205 is very natural and truthful

witness, she would not falsely narrate the gang rape on her, even her husband would not mention the occurrence to have happened in his presence. PW-106, 203, 247 and 257 are also in clear support of the happening of gang-rape. This Court had opportunity to see the expression of PW-205 which, while seeing from the lenses of judicial appreciation of evidence, were found to be sufficient and solely capable to believe the occurrence to have happened. Seeing the entire evidence on record collectively, this Court has no hesitation to hold that the occurrence of gang-rape on the victim PW-205 has indeed taken place as there is absolute ring of truth in the occurrence. The entire evidence collectively show that the occurrence of gang rape on PW-205 had in fact happened on the date, time and place of the occurrence.

(d-5) The prosecution has miserably failed to bring on record as to who has committed the gang rape on PW-205. There is in fact no material to believe that PW-205 has narrated an imaginary incident. When for want of evidence it is not proved that who did the gang rape, that alone is not capable to conclude that the gang rape has not taken place. It is true that there is no medical evidence either in form of injury certificate or in form of any oral evidence of any doctor. This Court is since not ready as is unjust, to subscribe a view that just because no doctor or injury certificate has supported the happening, the happening cannot be believed. Subscribing that view would amount to turning the face from the hard realities of life. When PW-205 is not implicating any of the accused, it is clear that she does not have any other intention in her mind for narration of this incident, except ventilation of tremendous violation of her human right and constitutional right before the

Court. The loud cries of such victim of crime if not heard by the system, it is mockery of justice.

Here, it sounds quite fitting to record the deep concern of the Court about violation of human rights and constitutional rights of the victim who was subjected to gang rape. The victim of this offence, has not sought any prayer from this Court with reference to the horrible incident she had to undergo. This Court firmly believes that it is call of justice, equity, good conscience and even prime and paramount duty of the Court to address the issue eventhough the accusation against the accused has not been proved. This is for the reason that the Court is concerned with the commission of crime primarily since that is to take care of subsistence of Rule of Law. The international concern for the impacts of sexual offences against women guide this Court that this victim needs to be compensated. It is nobody's case that she has been compensated in the past for this occurrence with her. This Court further believes that commission for women, Gujarat State and Principal Secretary of the Department of Social Welfare at Gandhinagar needs to be directed to see to it that the case for compensation to this victim of crime be addressed appropriately and either from the source of the Board formulated for the compensation of rape victims or from the Gujarat State Exchequer as the case may be this victim be paid the compensation to be awarded by this Court. This Court is of the firm belief that this is a fit case to grant compensation to the victim as, she has not received any compensation for this offence committed against her and even if she has been granted any compensation for the riotous activities and injuries sustained by her, then also, no case can be better than this

case to even grant her further compensation. Learned advocate for the victims has submitted to this Court that even in case of the family members of the deceased victim of rape offences, the compensation should be granted. This Court does not find this suggestion appropriate. It is reasonable to grant compensation to a victim of rape who has survived and that too a victim of gang-rape like PW-205. How that can go out of the site that it is an admitted position all victims of this crime have been more or less compensated. Further compensating PW-205 is mainly with a view to see to it that the PW-205 was victim of one of the worst crimes against humanity and the worst crime among the sexual offences. Further, no compensation in fact, is weighty enough to wipe out the permanent scar, effect and impact on the mind of the victim of the crime of gang-rape. This Court believes that sexual violence apart from being dehumanizing act, is also unlawful intrusion on the right of privacy and sanctity of any woman. The offence of gang-rape gives a serious blow to her supreme honour, her self esteem and her dignity. Unfortunately, PW-205 was of no help to the justice delivery system to prove that who were the tormentors, which, according to this Court, cannot be a reason to disbelieve her narration. It is rather a very sound ground to believe that she narrates the truth and the whole truth. It seems that a compensation of Rs.5 lacs would be helpful for the victim of this crime. It is duty of the state to maintain law and order situation so nicely that, such offences do not take place at all. When such offences take place, it shows that the state has responsibility to compensate the victim as, the concept of role of law so suggests. This compensation seems to be sufficient for violation of her human right in the facts and circumstances and the compensation already admitted to have been granted

to this victim.

It is therefore, held that the incident of Zarina as narrated by Zarina had in fact, taken place but, the charge of gang rape is not held to have been proved against any of the accused. **Hence, all the accused are entitled to secure benefit of doubt qua the charge u/s.354 and 376(2)(g) of I.P.C. with reference to the occurrence of Zarina**. But, the occurrence and commission of offence u/s.376(2)(g) has been proved.

(e) PW-150 who is found truthful PW, does prove nagging, harassing and outraging the modesty of mother and sister of one girl named Nagina. PW-150 is the eye witness of the said occurrence. **In this case the occurrence of outraging the modesty of mother and sister of Nagina is held to have happened but, the prosecution has not proved as to who was the tormentor of the crime and that the case qua this aspect has not been proved against any of the accused.**

(f) By the oral evidence of PW-158, outraging modesty of one Farzana, sister Saida one Saberabanu have been proved to have occurred but, the case qua any of the accused with reference to these three occurrences does not stand proved. However, it stands proved that such occurrences at the site of Khancha did take place.

(g) As far as the oral evidence of PW-106 who talks about her own daughter and evidence of PW-158 is concerned, it is getting proved that the rape on deceased daughter Farhana was committed which has been stated by PW-106 right from

the statement of the year, 2002, this mother states about outraging modesty and commission of rape on her daughter during the occurrence. PW-158 supports the same.

It is again sad that the prosecution did not prove on record that who is the author of the crime. But, the fact remains that the witnesses do not speak lie, they speak the truth. This Court, therefore, holds that the occurrence of rape on Farhana is believed but, it is not proved beyond reasonable doubt as to who is the author of the crime.

(h) Incident of gang rape on Sofiyabanu Majidbhai Shaikh @ Supriya (D/o. PW-156) :

On perusal of EXH.2062, the inquest panchnama, it seems that Sofiya died at midnight 00:00 hours of 01/03/2002 during her treatment. The testimony of PW-156 shows the witness was very much confused on the date of death of his daughter. His oral testimony relating the incident to oral D.D. of the deceased before him which does not tally with the date of death of the daughter. This is since, doubtful, the incident cannot be believed hence, benefit to the named accused.

(i) Tearing of the clothes of deceased Nasimbanu has been testified by PW-142. The general support to this is also available from PW-205 and PW-158, PW-162, PW-112, etc.

As has been discussed in the chapter of the sting operation, through oral evidence of PW-322 extra judicial confession of the 3 accused including A-22 is on record. If this extra judicial confession, which is held to be voluntary,

dependable, truthful and credible, is perused A-22 is found confessing that he did commit rape on one Muslim girl. He has named the girl to be Nasimobanu, a fatty. The prosecution has not proved that Nasimbanu referred by PW-142 is whether the Nasimobanu referred by A-22 or not. But, the fact remains that A-22 did commit rape on one Muslim girl, according to him, named Nasimobanu whose father has also been mentioned in the sting operation by A-22. When A-22 himself has confessed and when he talks about his own crime and when he talks about rape committed by him as an admitted fact, the same should not be and cannot be ignored on technicalities. Principally, commission of rapes and gang-rapes by different rioters, may be known to the PW or unknown to the PW, has been proved on record to have been committed beyond all reasonable doubt. In these circumstances, the Court has every lawful authority to take the extra judicial confession into an aid and when, A-22 himself is a maker, even no corroboration is required to be searched. This corroboration is only essential to adjudicate whether A-22 is simply boasting up without an base or is he speaking the truth. The oral evidences of numerous witnesses, surely confirm that the extrajudicial confession even on the part of commission of rape by the A-22 is most believable. Principally, it cannot be disputed that extra judicial confession is a dependable evidence. If the extra judicial confession is before some governmental agency, then, it can be tested whether can it be termed to be weak or strong. But when, the extra judicial confession is made in a leisure posture, at the residence of A-22, there is absolutely nothing on record to even think that there can be any weakness in this evidence. Most important aspect is that, this confession is not challenged in any manner and is deemed to have been admitted by A-22

twice, firstly before the PW-322 and secondly, before the Court. This Court therefore, firmly believes that commission of rape by A-22 stands proved on Muslim girl named as Nasimobanu according to him. Here what is important is rape on Muslim girl and not what was her name. It needs a note that the age of the said Nasimobanu is not on record. Hence, considering the overall facts and circumstances of the case and viewing the description by A-22 in the sting operation, it is safe to believe that the age of said Nasimobanu must not be less than 16 years. No part of confession is to the effect that the said girl was minor. The prosecution has not proved any of the contents except placing on record the sting operation and thereby extra judicial confession of A-22 through PW-322. This act was done by the A-22 alone who describes in detail about his commission of the offence of rape. The question of giving consent for intercourse in such circumstances where communal riot was spread, is totally out of question hence, it is held that necessary ingredients to bring home the guilt of A-22 for the offence u/s.376 of the I.P.C. are held to have been proved, the guilt of the A-22 is brought home. It is true that the charge is for the offence u/s.376 (2) (g) r/w. Sec.34 of the Indian Penal Code. The said offence of Sec.376(2)(g) is neither confessed by A-22 nor proved by the prosecution, hence, qua that section, the accused is entitled to get benefit of doubt. In comparison to offence u/s.376, Sec.376(2)(g) of I.P.C. has more gravity hence, the accused can be termed to have enough notice through the charge for the allegation against him u/s.376 of I.P.C. Hence, there is no technical hunch in convicting the accused u/s.376 of the I.P.C.

The doubt about the name of the victim is indeed not

material. Suffice it to say that A-22 has committed offence or rape on a Muslim victim woman to whom A-22 refers as, Nasimobanu. It is not just and proper to disbelieve the extrajudicial confession for the reason that no prosecution witnesses speak on rape on Nasimobanu. When the witnesses speak of rape on Muslim girls, it is inclusive of Nasimobanu. What is there in name when the guilt is brought home.

(j) It stand proved beyond all reasonable doubts that A-22 has committed rape on one Muslim girl whose name was Nasimobanu according to A-22. For this act, only A-22 individually is held guilty. There is absolutely no charge for this offence to be read with u/s.120-B of u/s.149 of I.P.C. The charge is for the offence to be read u/s.34 with some of the accused against whom charge has been framed but then, it does not stands proved that other named accused have committed this offence. Considering the record of the case **A-22 alone is held guilty for commission of offence u/s.376.**

(k) Since the offence u/s.376 stands proved against A-22. The offence committed by A-22 can safely be inferred to have been committed by using criminal force on the victim woman. Even as stands proved from his confession he did all such things which squarely fall in the definition of Sec.354. It is out of the test of decency to reproduce the same. However, in the chapter of sting operation, it had to be recorded. The intention of A-22 can safely be held to outrage modesty of victim woman Nasimobanu. The overall consideration of facts and circumstances, therefore, also prove that A-22 has also committed the offence u/s. 354 of I.P.C. hence, he is also

held guilty to be punishable for this offence. A-22 is punishable for minimum 7 years Rigorous Imprisonment to Life Imprisonment and fine for S.376 and for S.354, imprisonment of either description upto two years or fine or both whereas, he is granted benefit of doubt for the charge u/s.376(2)(g) r/w. Sec.34 of the I.P.C.

(l) Other incidents have in fact been dealt with and decided wherever the witness has been appreciated. Suffice it to say here that, in none of the case of rape or outraging modesty against any Muslim woman it is proved beyond reasonable doubt as to who the tormentor was.

In these circumstances, all the accused against whom the charge has been framed except A-22 shall be granted benefit of doubt for the charge qua u/s.354 and 376(2)(g) of I.P.C. A-22 shall be granted benefit of doubt u/s. 376(2)(g) of I.P.C.

As a result, A-22 is held guilty u/s. 354 and u/s.376 of I.P.C. as held herein above. It is held that A-1, 10, 28, 40, 26, 30, 42 and 48 are the accused against whom the charge was framed. All these accused are granted benefit of doubt u/s.354 and 376(2)(g) r/w. Sec.34 of I.P.C.

For the remaining accused, the charge under these sections was not framed. It is held that :

(11.1) A-1, A-10, A-26, A-28, A-30, A-40, A-42 and A-48 have all been granted benefit of doubt for the charge u/s.354 and 376(2)(g) r/w. Sec.34 of I.P.C.

A-22 shall be granted benefit of doubt for the

charge qua u/s.376(2)(g) of I.P.C.

A-22 is held guilty for the offence committed u/s.354 and 376 of I.P.C.

The point of determination No.11 stands answered accordingly.

XII-A. Point Of Determination No.12:

Ques. Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any offence of attempting murder of Muslim victim was committed, or not? If yes, which accused has committed the offence and which of the offences were committed? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec. - 307 of I.P.C., Sec.- 307 R/w 149, 307 R/w. 120-B of I.P.C.)

XIII-A. Point Of Determination No.13:

Ques. Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any offence of murder of any Muslim victim whether was committed or

not? If yes, which accused has committed the said offence? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?

(With reference to Sec. - 302 of I.P.C., 302 R/w 149, 302 R/w. 120 – B of I.P.C.)

XIII-B. Discussion On Point Of Determination No.12 and 13 :

(I) Introduction :

To avoid repetition and for the sake of convenience, both these points have been preferred to be discussed together.

(II) POSTMORTEM NOTES :

(A) There are in all 68 postmortem notes which are of unknown dead bodies. As discussed at Part-4, PW-285, basing upon his personal guesswork has endorsed inserting names of different deceased on the top of the P.M. Note. But, as has been discussed, this Court has not believed the said endorsement to be genuine and true and it is held that because of the said endorsements, the particular P.M. Note cannot be held to be of particular deceased. The record created by PW-285 is not held to be faithful and believable record.

(B) It needs a note that all the 68 P.M. Notes are from Naroda

Police Station. The P.M. Notes of Naroda Gaam Case have already been taken away by the respective authorities. There are two cases of Naroda Police Station, hence, it is safe to believe that all the 68 P.M. Notes are of the deceased of Naroda Patiya area. All the death have been occurred on 28/02/2002, which can link their death with the communal riots and the Naroda Patiya Massacre which took place over there.

(C) It needs a note that out of 68 P.M. Notes on 6 of the P.M. Notes the P.M. Doctors, the P.M. Doctors have opined with other reasons than the reason of extensive burns as the cause of death. In all the 6 P.M. Notes, the cause of death of the deceased is shown on account of shock due to haemorrhage / shock due to head injury / stab injury / abdomen injury, etc. However, on the 62 P.M. the cause of death is septicemia, shock due to extensive burns injuries.

This is suggesting the Court that only a few of the deceased have died on account of other injuries than burn injuries. The stab injuries and head injuries as cause of deaths, link up the free use of blunt and sharp cutting weapons in the communal riots by the rioters.

(D) As discussed, out of 68 P.M. Notes, 62 P.M. Notes are relating to the opinion wherein, the postmortem doctors have opined that the cause of death is shock as a result of extensive burns over the body. In most of the P.M. Notes the entire body is noticed to have been burnt, the burns to have been present over on the entire body and that even all these deaths can safely be connected with the communal riots and are obviously of the victim inhabitants of the Naroda Patiya

area.

(E) The above discussion shows that about 68 deceased have died homicidal death and that in view of the entire scenario, it becomes amply clear that these are the deaths which are neither accidental nor suicidal but, are homicidal deaths, committed on account of communal riots. As proved in the Part-3 to 6 of the judgment, these deaths are result of pre-concert, premeditated conspiracy and that the deaths have been caused of the deceased victims after full preparation having been made by the rioters. It is therefore, held that all the 68 deceased have died the death on account of their murders having been committed on the date of the communal riot by the members of unlawful assembly while sharing common objects.

(F) In all the 68 cases, the injuries have been found by the respective P.M. Doctor to be ante mortem in nature which is an important factor to decide that the deceased were burnt or injured and because of that their death has been caused.

(G) In case of about 13 identified dead bodies, the P.M. Notes are on record. In case of all these P.M. Reports, it is becoming very clear that all these deceased had died while their treatment, on account of extensive burn injuries, shock due to extensive burn injuries, septicemia as a result of burns, etc. In case of all the above referred deceased, the injuries sustained by them have been opined by the P.M. Doctors to be ante mortem in nature, the dead bodies are identified dead bodies and that the names shown in these P.M. Notes are the names of the deceased died in this case while their treatment was

ongoing and who were admitted in the hospital for their treatment.

(H) Upon perusal of the column of the police report, it seems that in case of all these dead bodies, they were burnt after sprinkling petrol or kerosene on them and since, they were burnt, they were brought for treatment. In one such P.M. it has been specified that, “since burnt near Nurani Masjid, brought at hospital for treatment and died during treatment.” In case of one of the P.M. Note, there is a specific note that on account of having sustained bullet injury at 12:30 p.m. on 28/02/2002 the deceased was brought at the hospital and he died due to shock haemorrhage as a result of bullet injury.

In case of some of the deceased, their dead bodies have been shown to have sustained serious bodily injuries, fractures, etc.

If all the P.M. Notes are seen cumulatively, it becomes amply clear that these are not the cases of natural death but, these are the cases of murder as, such ghastly preparation presupposes intention to do away and knowledge about likelihood of causing death in the process.

(I) Certain burial receipts have also been brought on record. It is true that for those burial receipts, the postmortem notes have not been found on record but, then, it is even not essential in light of the testimonies of their relatives, it is clear that they also died homicidal death in the riots on the date of the occurrences. Their deaths are permissible to be presumed as, though about eight years had passed, they are neither

heard nor seen by the family members who would have naturally heard or seen them, had they been alive.

(J) Thus, in light of the above discussion it is clear that there are in all 81 P.M. Notes on the record, 11 burial receipts, and that on account of the fact that there were three to four missing persons, the death toll can safely be tallied with the prosecution case of 96 deceased to have died in the occurrence. In fact, the record and permissible presumption proves homicidal deaths of 96 Muslims in the three occurrences of the day. These murders are committed by the assembly on account of the abetment, instigation and pursuance of the conspiracy hatched. The murder held at Point of Determination No.10 that of Kausharbanu is one among these which took place in the evening occurrence committed by the assembly.

(K) The testimony of the P.M. Doctors have been perused wherein, all the P.M. Doctors have opined the injuries sustained by the dead bodies to be ante mortem in nature, the deceased to have sustained serious burn injuries upto 4th, 5th and 6th degree, it is also opined that the cause of the death was extensive burns sustained by the dead bodies, carbon particles were noticed in the trachea of the deceased for which the doctors have opined that if a live person is thrown in the burning flames, such symptoms are possible and that all those injuries sustained by the dead bodies were sufficient to cause death in the ordinary course of the nature.

(L) The cross examination in case of the postmortem reports with the endorsement on the name is mainly based on the

name of the deceased shown by the endorsement and the injury alleged to have been sustained by the deceased before death. As has already been discussed that the endorsement is not at all trustworthy and that the said procedure has since not inspired the confidence of this Court the question of appreciating that part of cross examination is totally and thoroughly out of question. As a matter of fact, even the defence has confronted the endorsement and in fact, has objected for the said endorsement. It is therefore, also clear that even the defence is not agreeable to the endorsement by which PW-285 has admittedly named any dead body with any postmortem report which all, need no discussion since, it would be repetition.

(M) Certain questions about the stage of the rigor mortis, need of ossification test, etc. is also not going to bear any fruit in favour of the defence because these are the ideals but, noting the facts and circumstance in which the dead bodies were brought in the communal riots and the manner in which examination of those dead bodies were performed, are altogether incomparable affairs with the usual procedures being adopted for the postmortems.

(N) In case of death the injuries have been opined to have been sustained on vital organs of the body, the injuries were opined to have been possible because of flames, it is also opined to have been possible if one is in the house which is set on fire and when the person tries to escape from such a burning house, the injuries sustained by the deceased are very much possible.

(O) The cross examination on the educational qualification of the doctors also does not find any favour with the Court. It needs to be noted that in the general hospitals, there are expert doctors, there are doctors who are in fact, employed with the hospital and there are student doctors as well and that the necessary treatment is always given either by the expert or in consultation with the expert. The fact that in the team one of the doctors was under training or in process of learning sounds very natural. No doubt is created on this aspect.

(P) This Court is aware that in case of such mass casualties which has happened during the communal riots, the usual practice of examining the patient and the usual practice of doing postmortem would not be adopted. All kinds of shortcuts would be adopted and it would not be a matter of surprise if the same has even happened in case of all these postmortems brought on record of this case.

As has come up on the record, there was shortage of doctors to perform the postmortems and hence, they were called upon from all the moffisils health centers and different units so as to meet with the heavy rush of the postmortem work. Considering this, the text book cannot help the situation if the doctor has not verified the odour. Such literature becomes merely academic aspect. There is nothing to believe that without noting the odour, the P.M. doctor cannot conclude. It has also to be borne in the mind that after passage of time, odour goes away. If the doctor has not recorded some observation than for that, the victim and that too and injured victim cannot be disbelieved.

(Q) From the material produced it is clear that the features are changed due to contractions of the skin and mole, scars and tattoo marks are usually destroyed. It needs a note that about 68 postmortem notes are of unknown dead bodies, therefore, it seems that the dead bodies must have sustained severe burn injuries.

(R) In the literature it is suggested that the dental chart should be prepared and x-rays of the jaws should be taken, D.N.A. typing is useful and in the badly charred body, the sex can be determined by finding the uterus or prostate which resist fire to a marked degree.

Theoretically, all what has been written in the book is true but, the fact remains that in the facts and circumstances of the case, all such theories cannot be invoked to disbelieve the injured witnesses who would normally not involve anyone falsely by leaving aside the true culprit.

(S) The cross examination of PW-285, his reply with response to the question by the Court, etc. have been discussed in another part of this judgment (at Part-4) hence, the repetition has been avoided. Suffice it to say here that, PW-285 is not found to be a person who has maintained and created the faithful, dependable and reliable record in the case.

(T) As far as the P.M. Doctors of the 68 postmortems are concerned, since those postmortems are of unnamed or unknown bodies, the cross examination on that aspect is found to be irrelevant to decide the worth of the testimony or to decide and or to appreciate the testimony given by the

respective relatives of such deceased persons or that of eyewitnesses.

(U) In some of the postmortem notes, it has been noted that the stage of rigor mortis was existing, the skin and the body was absolutely blackened, the magots in the body were developed, the burns upto 5th to 6th degree were found on the body with the opinion that, if the person is thrown in the flames, the injuries sustained by the dead body were possible.

During the cross examination, attempts have been made to create doubt since certain symptoms were not found on the dead body as were not noted in the P.M. The kind of injuries or kind of attack mentioned by the relatives of the deceased is argued to be not tallying with the record. As has already been discussed in the case of dead body which was unknown all such cross examination does not help the defence to create any reasonable doubt against the case put up by the prosecution through its witness viz. the relative of the deceased.

The inquest since is of unknown dead body it cannot be taken as final truth as against the substantial oral evidence of the eyewitnesses of murders of their deceased family members.

(V) In case of many postmortems it has been observed by the doctor that the body was completely burnt and only skeleton was found hence, no internal examination could be done except concluding that the death has been caused on account of sustaining shock due to burns. The opinion has also been given by the P.M. Doctor to the effect that if highly inflammable substance is thrown over the body and if then one is set ablaze

the kind of the position of dead body reducing it to skeleton is possible.

(W) In some of the P.M. Notes it has been concluded by the doctor, as their observation while performing the P.M., that the body of the respective deceased was totally roasted and burnt, there were severe deep burns, skin was adherent to bones and muscles were exposed and burnt. All these tallies with the existence of ingredient of intentional homicidal death of the victims.

(X) The opinion has also been given to the effect that the injuries sustained by the dead body is possible if inflammable substance like kerosene or petrol is thrown and then the person is burnt, the injuries on the face, chest, etc. can be termed to be on vital part of the body, presence of carbon particles in trachea suggest that a person has inhaled carbon dioxide, smoke or fume during lifetime. This goes with the prosecution case of torching Muslims while inside their dwelling houses.

(Y) PW-103 has been examined for one unknown dead body which, on account of the endorsement of the PW-285 has been linked with the dead body of Kausharbanu wherein, the uterus of that female dead body was noticed to be enlarged and a full term male fetus was found of 2500 gms. (as admitted by the doctor he has written it to be 250 gms. This shows the quality of the postmortem performed by the doctors in the general hospital during the time of communal riots.)

It seems that the impression carried by the previous

investigators was that only Kausharbanu was a pregnant woman, but, as a matter of fact if the R & P of 'C-Summaries' is seen, it can be made out that at Exh.1776/22 there is a case of another pregnant woman whose stomach has also been complained of being slit.

It is for all such reasons, this Court was not inclined to act upon the personal guesswork in form of endorsement of PW-285.

(Z) In case of PW-122, instead of 01/03/2002 and 02/03/2002 the P.M. doctor has written the date of receiving the dead body to be 01/02/2002 and 03/02/2002. In the same way this witness has written 12 P.M. for 12 midnight of 02/03/2002. Even this is also a pointer to the kind of work done to perform the postmortems which reason is strengthening the observation and conclusion of this Court that merely from the P.M. reports and testimonies of the P.M.Doctor who has done the postmortem of unknown dead body, the impeachment of the relatives of deceased witness cannot be done or the credibility of the relative eyewitnesses of the deceased cannot be doubted.

(A-1) As discussed, there are 13 identified bodies for which PW-47, 50, 51, 95, 96, 118, 119, 121 and 128 have been examined. All these witnesses obviously, supported and proved the contents of the respective postmortem notes of the deceased.

The cross examination on the aspect that the odour of the inflammable substance should be noticeable one is not

found impressive since one of the expert PW has opined that with passage of time, the odour goes away. Secondly the presence of odour has a prerequisite of the PM Doctor noticing and noting the kind of observation. Merely, because some such observations are not recorded in the P.M. Note it cannot be believed that the relatives of the deceased are speaking lie on the aspect.

(B-1) In case of PW-51, he has clarified that the deceased died, after 12 days of the injuries, and that the deceased had no clothes and only dressing material was found on his body. The witness has explained that it is for this reason that he did not have any opportunity to notice whether the odor was left out or not. This is also one explanation with reference to presence of odour which needs to be kept in the mind while appreciating the evidence that the identified dead bodies were in fact, of the deceased who died during their treatment and that when the person dies during the treatment, it is obvious that he would be found with the dressing material more particularly in case of burns and hence, in such circumstances also there would not be presence of odour but, merely that does not create any reasonable doubt against the prosecution case on record.

(C-1) Another cross examination is of possibility of having used non-sterilized bandage, gauze, cotton or instrument as reason for the septicemia in addition to the fact that one of the reasons for septicemia can also be lack of proper intake of antibiotic. This Court is of the opinion that this kind of suggestions are quite general in nature and that such suggestions cannot be made applicable in the facts and

circumstances of this case without showing such suggestions to have been in fact, existed in the case of the respective deceased which, since is absent in the case, this Court does not find the material to create any reasonable doubt against the prosecution case.

(D-1) On the aspect of odour this witness has given a clarification which is adding one more facet to believe that odour is not the test to decide that whether the testimony of the P.M. Doctor can link the death of the deceased with the crime or not. The witness has voluntarily opined that if the burn injuries are extensive in nature, then, it is very much possible that the odor may not remain. This reply is giving a satisfactory explanation on the aspect of cross examination of many of the P.M. Doctors qua odour.

(E-1) Another cross examination is on the stage of rigor mortis, the reply given by the witness clarifies that even the stage shown that of rigor mortis also in fact, link the death with the communal riot.

(F-1) The cross examination on the ossification test also has not created a ground to throw away the fact stated by the relative of the deceased. The absence of injury marks on the body of the daughter of PW-156 has also become point of confrontation but, the reply thereof, in fact, supports the prosecution case which tallies with the opinion given by the expert doctor PW-127. In fact, in light of the opinion given by PW-127 much clarification has been brought on record and that the cross examination has therefore, not yield any fruit in favour of the defence.

(G-1) PW-96 has brought on record several postmortem reports, the contents of the said reports have been proved by the said doctor and that during the course of cross examination, no substantial challenge is found to have been offered to the opinion given by the doctor as an expert.

Different injuries sustained by the deceased the observation of the dead body, the fact of the corresponding injury, the sufficiency of the injury to cause death in the ordinary course of nature, etc. have all been brought on record. Vide this testimony, the use of weapons like knife, etc. have also been brought on record of the case.

(H-1) During the cross examination the witness has admitted that to enable him to give perfect opinion about the injury, he is required to see the weapon and that the opinion given by the doctor is based on the probability. It is true that in this case, the police has not recovered or discovered the weapons used in the commission of the offences except in five cases. But, that lacuna of the investigation cannot benefit the accused in the manner desired.

Different accused were holding different kinds of weapons some of which were blunt, some of them were sharp cutting, some of which were fire arms and many more kinds of weapons and that the accused have attacked and assaulted the victims in groups and hence, the prosecution case is not a case of use of a singular weapon, the line of the cross cannot help the defence, because here, the principle of probability suggests that the deceased might have different kinds of injuries, one

may be of sharp cutting weapon another may be of blunt weapon as the tormentor of the crime was a group who all were possessing different kinds of deadly weapons and the possibility and probability of use of all such weapons to attack a single individual victim cannot be ruled out. In fact, different kinds of injuries prove the prosecution case beyond reasonable doubt of attack and assault by unlawful assembly where each member was holding one or another kind of deadly weapon and the weapons were used for the assault and attack.

(I-1) In case of postmortem note of deceased Hamid Raza, it is very clear that he has developed pus formation viz. septicemia in his entire body and that was the cause of his death.

(J-1) In case of the P.M. Note of Asif Shabbirbhai, his injuries have been noticed on vital parts of the body like head, neck, etc. Moreover, his burn injuries were with pus and here also septicemia has been concluded to be cause of his death.

(K-1) In case of Saidabanu Ibrahim Shaikh the P.M. Note itself reveals that the inquest panchnama was to the effect that the deceased was burnt after pouring kerosene or petrol.

In the same way, the P.M. Note of Zubaidabanu is about the place of the occurrence wherein, the area has been mentioned to be near Nurani Masjid. In fact, this goes with the prosecution case, as near Nurani Masjid has to be seen in a large perspective.

(L-1) EXH.2021, the inquest panchnama proves death of

Mohammad Shafiq Adam Shaikh in the morning occurrence.

EXH.2075, the inquest panchnama shows the death of Shakina Mehboobbhai to have been committed in her house which was clearly a murderous attempt in which ultimately, she died.

As has been discussed in Part-4, the dead bodies which were found from the hutments of Jawannagar, were all deceased victims of the noon occurrences where Muslim Chawls and Muslim dwelling houses were burnt when the deceased were inside the dwelling houses and that as the P.M. Notes suggest, their deaths were caused on account of carbon particles in their trachea.

Daughter of PW-79 died since was burnt, EXH.212 proves death of Mehboob Khurshid on account of burns.

PW-76 is an eyewitness where his wife Noorjahan, mother in law Mahaboobi, nephew Mohsin, niece Aafrin were burnt alive by the mob.

EXH.221 suggest the death of Supriya Marjid to had been caused in the noon occurrence as, none of the PW support this death qua the evening occurrence. In the facts and circumstances, this seems to be a death in the noon occurrence.

EXH.662, 207, 214, 221, 224, 203, 1333, 1454, 2063, 2064, 2041, 1303 are all the inquest and identification panchnamas which prove numerous deaths to have been committed in the evening occurrence. PW-191 proves death of

58 persons at the Khancha including his wife, daughter, etc.

PW-198 has stated that his mother Mumtaz, wife Gosiya, Son Akram, aunty Rabiya, Reshma, Farhana, Jadi Khala, Shabbir, Mehboob and Saira died in the evening occurrence.

PW-90 has stated that 6 of his family members had died in the occurrence of evening, PW-156 has also stated that 9 of his family members had died in the same incident, as emerges on record and even Sarmuddin Khalid Shaikh sustained fatal injuries in the incident and died during the treatment.

(M-1) All the details about the death toll of 96 Muslims have been discussed in the relevant chapter of Part-4 of the judgment hence, the repetition is avoided here.

(III) INJURIES & ATTEMPT TO MURDER:

[A] In case of Zarinabanu Naimuddin, viz. PW-205, the doctor PW-84 has deposed that Zarina herself has given the case history which was to have been beaten in communal riots and that she has sustained injuries over both the shoulders and head. The injury on Zarina was on her shoulder which was a traverse contused lacerated wound upto bone deep, she did sustain fracture, in the internal page No.3 of the compilation of medical case papers it has been noted that Zarina gave history of having suffered from assault in which injury by sharp instrument in the communal riots has been caused. It is opined by the doctor that the injury on both the shoulder of Zarina are

possible if, the blunt side of the sword is used with force. This tallies with the testimony of Zarinabanu. From the entire cross examination, no material has been brought on record which falsifies the say of Zarina and which raises any kind of question mark against the opinion given by the expert doctor.

In case of Zarina, the doctor was confronted on his observation about entry wound found on the body of Zarina. It has been explained by the doctor that it is true that the word entry wound relates with the injury by fire arm and that the patient viz. Zarina has not given any such complaint but, since it was a case of mass violence, the doctor thought is proper to note down his observation. During the course of the cross examination, the doctor maintained his opinion about the injuries sustained by Zarina. Serious bodily injuries have been caused to Zarina which apparently seem to be by the accused armed with deadly weapons. This case is a clear case of intentional attempt to murder Zarina. In fact, the attack on her being imminently dangerous, it must, in all probabilities was capable to, cause her death. Same is the case of Supriya, Razzak Bhatti and Shakina Bhatti, who had sustained fatal injuries with intention to kill them since were burnt alive while they were in house, the nine who died in the hospital etc.

[B] PW-43 has examined 7 different patients and that through her testimony, she has upheld and maintained her opinion about the injuries and about the possibility of use of weapons, etc. The witness has been confronted on the aspect that the stab injuries were caused but, those stab injuries were caused by which weapon, that the witness is unable to say. But, that does not indeed matter much when the injury is certified to be

dangerous enough and when it is coming within the purview of grievous hurt.

[C] PW-42 has testified for PW-200 wherein, in the history itself, PW-200 has informed the doctor that he was very much beaten by the mob at Naroda Patiya at about 11:30 a.m. on 28/02/2002. There is no history of the PW-200 to have been driving any vehicle and meeting with any accident, etc. The history given by the PW-200 rather, goes with his testimony.

[D] PW-39 has examined about 5 injured victim patients. He has deposed on the contents of the injury certificates, the history given by the father of the patient Ahmed Mohammad Hussain was to the effect that the patient had sustained burn injuries caused by the opposite party on 28/02/2002 at 5:00 p.m. by throwing some chemical over body and light the fire, the head injury by some metal has also been observed, the patient to have been treated in the private hospital first is also on record of the case.

All the different injury certificates and medical case papers have been brought on record, the history given in all such cases are easily relatable to the date, time and place of the offence, the injuries also apparently seem to have been occurred upon throwing petrol or inflammable substance on the body of the injured and then to have lighted the fire. It is opined by the doctor that the kind of the burn injuries are possible if petrol is poured on one's body and then, if one is set on fire. The doctors have opined that the kind of the injuries sustained by the injured tally with the history given by them, the observation and the opinion of the doctor is that along with

the burn injures there are different other injuries on different region of the body of the injured, different operations, screen grafting, scrapping, etc. were needed to be done to the patient victims. This all goes with intentional attempt to murder.

[E] Even during the course of the cross examination, some of the history noted by the doctors have been brought on record. This in fact, strengthens the prosecution case of having caused simple to grievous hurt during the entire day in all the three occurrences. The victims being illiterate, may not have time sense as an urban man has, but, that does not successfully challenge the credibility of the victim PW.

In cross-examination in one of the case, the doctor has agreed that in the injury certificate of the 20 days old infant the history of the mother was written, but, this does not change the fact of having sustained the injury in the communal riot, on the date, time and place of the offence. This goes with inability of the mother PW to communicate.

[F] In case of cross examination of PW-39, it has been suggested and admitted by the doctor that the burn injury pick up more severity if not attended on time. In the humble opinion of this Court this admission does not create any reasonable doubt about the opinion given by the doctor in each of the case for which he has given the injury certificate. In the same way, it has also been admitted by the doctor that the opinion he has given was based on the case paper and that it is not his personal opinion. It needs to be noted that the doctor is an expert person, he is indeed required to opine basing upon the case paper of the patient if the patient is not personally present

in the Court. The doctor comes in the Court to give an account of that day when he has treated or examined the patient and therefore, it is rather very natural that every doctor would give his testimony basing upon the case papers.

On the question by the Court, the doctor has admitted that he was personally involved in the treatment of all the five patients for whom he has issued the injury certificates and that the injury certificates have been issued basing upon his personal knowledge. In the opinion of this Court, this is sufficient and satisfying to hold that the doctor witness is quite credible.

[G] Alongwith the deposition, the defence has given xerox copy of certain pages of the book on forensic medicine wherein, it is highlighted that there are varieties of burns and in case of burns caused by kerosene oil, petrol, etc. the burns are usually severe and are producing sooty blackening of the parts and have the characteristic odour.

[H] It is true that in some of the cases, the history written does not tally with what is stated before the Court by the injured. In case of PW-158 the history seems to be that of the fact that, “the occurrence took place at about 6:00 p.m. at Naroda Patiya. Having come at home, they burnt us by kerosene and petrol.” As has already been discussed if the injured were burnt at their house, there is no reason for the injured to speak lie even while giving history to the doctor. What is rather possible is that the history has been haphazardly taken and haphazardly written by the doctor without showing due care to the fact that after eliciting proper

information only the history should be written. Moreover, in this case about twenty eight seriously injured victims were taken to the hospital by police. Even victims and injured were also brought from other police station areas hence, those were not usual circumstances where, it can be believed that the history were taken by the doctors strictly from the injured only. The accompanying police, neighbour, relative, family member, may also give history to the doctor. Hence, it would be causing severe injustice to depend on the words of history before the doctor to discredit the injured. As it may be, but the fact remains that this Court firmly believes that in case of injured when there is nothing on record to disbelieve the injured he should not be disbelieved on any of the count. In all such cases of injuries the doctors have opined that the injuries sustained by the injured were possible if the injured were burnt by kerosene or petrol. This proves the prosecution case.

[I] In case of Jetunbanu, the witness has been found to have been subjected to severe assault and that the history of assault is on the record. In some of the cases the doctors have also opined that if the injured has been attacked with the blunt weapon then, the kind of injury sustained by the patient was possible.

[J] In light of the fact that on account of the situation of mass crimes and on account of wide spread communal riots in the entire city, the rush in the government hospital must be so much that the record of the government hospital cannot be and shall not be used to disbelieve the injured witnesses.

The injured witnesses were taken by the police to the

hospital for treatment. Accordingly, it is worthy to be noted that the mental frame work of the injured at that point of time should be and must be such where they would speak the truth or would not speak at all. If they have given the history to the doctor it must have been given in its true spirit.

[K] In light of what has been discussed above, this Court does not find anything to be doubted against the testimony of any of the injured witnesses. At the cost of repetition it needs to be noted that the injured persons have stated before the doctor that the burn injuries were sustained by them at about 6:00 p.m. at Naroda Patiya since were burnt by kerosene or petrol. This tallies with the description of the khancha incident and that there is no reason to disbelieve the injured witnesses.

[L] As has been admitted by PW-44, during the course of the cross examination that, in spite of the fact that there is detailed description given by the injured and noted by the doctor in the case paper while issuing the injury certificate only one word 'burns' has been written. In fact, this cross examination throws focus on the working style of the general hospitals considering which also it is not safe, just and proper to disbelieve the injured witnesses basing upon such insincere record of the general hospital. This witness has also admitted that in the certificate he has not opined as to the injury is possible by what, what is the period of treatment and what kind of hurt was sustained by the injured. According to this Court it is even this part of the cross examination which counsels the Court not to solely depend upon the testimony of the doctors to disbelieve the version put forth by the injured victims.

[M] In case of cross examination of some of the doctors, other possibilities in which the similar injury can also be sustained have been questioned to which the doctor PW has agreed. In the opinion of this Court some such admissions by the doctors cannot be taken in the spirit desired by the defence. It cannot be believed that the injured witness is giving a false account of the occurrence.

[N] PW-134 has issued injury certificate for the victim named Kulsumbanu has proved several fractures to have been sustained by the witness and the history given by the witness about having been beaten or having been injured in the communal riots.

During the course of the cross examination, the witness was confronted on the fact that his statement was not recorded by the police. But, as is already known, the police does not record the statement of the doctors, the injury certificate issued by them itself is their statement hence, no substance was found in the cross examination on this aspect.

[O] The experts like PW-286 were also confronted on the ground that since the witness has not given treatment, he cannot be held to be a right person to give his opinion. But, as has been opined by the doctor, he being an expert he can form his opinion even by seeing the papers. That being the position, the cross examination has not created any reasonable doubt against the testimony of the doctor.

[P] To inquire about the then position of the general hospitals, this Court has questioned the PW-288 who has

replied that during the period of communal riots, there was unusual, unprecedented and tremendous work load and that this (of 2002 riots) was the highest work load during his entire career. There was tremendous inflow of the riot victims as well as of usual patients and the inflow was many many times more than the routine inflow. The witness has also stated that they had to work upto 18 to 20 hours during those days.

[Q] PW-287 is the doctor who has treated PW-255 for his bullet injury which was given by the opposite party according to the history (and not by police). The patient was needed to be operated, the kind of the injury sustained by the patient can result into permanent disability of the patient.

During the cross-examination, the witness has shown his ignorance that whether he has sustained the injury in the police firing or not. As it may be, but the fact remains that such kind of serious bullet injuries were also sustained by the victim at the site of the offence.

[R] PW-127 is a P.M. Doctor having educational qualification of M.D. in Forensic Science. He has performed about 25,000 postmortems during his career, considering which, it is clear that he was the most experienced P.M. Doctor witness from among those who were examined before this Court.

In this case the burn injuries needs to be held as grievous hurt and that in a case when the victim had to be in the hospital for more than 20 days, it is clear that the victim must have undergone, severe bodily pain and that, such an injury in the facts and circumstances of this case, when the victims have

been burnt by pouring or sprinkling inflammable substance like petrol kerosene etc., and when they were burnt alive, such injuries are certainly needed to be treated as grievous hurt which were life endangering. Some of these injuries are such which can clearly be held to be attempt to murder.

The burn injuries sustained by the victims in this case are not accidental burn injuries, but, these burn injuries were voluntarily caused, with all necessary pre-planning, necessary preparation, using the inflammable substance or by throwing the victims in the flames etc. hence, the grievous hurt sustained by the victims in this case has to be decided considering the stay at the hospital and of hospitalization. The grievous hurt sustained by the PW who then could be survived after treatment, are all satisfying requisites of Sec.307 of I.P.C. It is nothing but, clearly an attempt to murder the respective PW.

[S] It is clear on record that the victim witnesses were admitted in the general hospitals, the time was of communal riots, there was unusual and unprecedented inflow in the hospitals, hence, it cannot be believed that even after the victim attained stability, the victims were continued as indoor patients.

In this situation continuance as indoor patients, itself is suggesting the serious situation. Therefore, in the peculiar facts and circumstances of this case, the stay in the hospital has to be treated as a very important factor to decide the kind of the hurt or to decide whether that was attempt to murder or not.

[T] The treating doctors have been frequently confronted on the fact of non-visibility of the injuries showing use of blunt weapons or showing use of sharp cutting weapons. This cross examination, as has already been held, is not creating any reasonable doubt and that this cross examination is not falsifying the injured witnesses in any manner whatsoever.

[U] PW-127 being an expert this Court has sought certain clarification from him as an expert doctor. What was testified by him has remained unchallenged and un-controverted as, neither side has cross examined the doctor.

What the doctor said has been reproduced herein below for ready reference so as to make the record clear that even if the injuries are not visible, the injured witness can still be held credible. The witness has testified that, “there are various types of injuries. If injury is caused by blow of hard and blunt object, then, it involves the deeper layers of the skin as well as fat under the skin. In case of superficial burn injuries i.e. upto 2nd or 3rd Degree, deeper injury can be visible. If degree of burns is beyond 3rd of 4th degree deeper tissues are also involved. Hence, in such cases, deeper injury is not visible. Normally the body gets roasted on 5th to 6th degree burns.

In case of burn injuries and visibility of injuries, number of factors like exposure of the burning body in the atmosphere, kind of inflammable material, quantity and quality of the inflammable substance, type of clothing, the area of the body covered by clothing, whether burning beam or substance is fell the body, needs to be seen. In case the person is dead and then

after the burning substance falls on the body, 5th or 6th degree burns cause charring or roasting of the body. In some cases, the deeper degree of burns can be found. After injury, if one becomes unconscious on account of fume or smoke or injury and if the burning process continues the deeper degrees of burns are possible.

In my opinion, the degree of burns itself cannot be the sole deciding factor to know about prognasis and gravity of the case. It may happen that if the burns cover larger surface area of the body, then even superficial burns can lead to death. It is also important that which part of the body has been affected due to burns, if the burn is on face and neck or chest region, then even if the burn is of 2nd or 3rd degree, then also death is possible rather at times these burn injuries are more serious than the burn injuries of the same degrees found on the extremities or other parts of the body. In case of burn injuries, normally, the patient remains oriented and conscious until his death if he is hospitalized and treated. However, if the burn injury is associated with head or other injuries on the vital parts of the body, there is possibility of his becoming unconscious."

[V] The above opinion of an expert has provided a clue to the court that there are many more factors to be considered while deciding the kind of the burns injury, its effect, visibility of the injuries, etc. It is also clear that the degree of burns may be less but, if it is on the vital part of the body it is to be counted as serious problem - grievous hurt or attempt to murder, as the case may be.

With this cross examination it is also becoming clear that even if the injuries are not noticeable, which are claimed to be the injuries to have been caused by weapon it is not sufficient to hold that the relative eyewitnesses of the deceased are not speaking the truth.

[W] The cross examination in case of PW-95 is on the aspect that the age of the burn injuries cannot be assessed. Even this is not found impressive by the Court. This fact has to be appreciated keeping in mind the fact that the dead body has a reference of police case, the dead body was admitted in the hospital either on the date of the communal riot or immediately after the communal riot, it has the burn injuries and that the address of the deceased was of the area viz. Naroda Patiya where communal riots were effectively spread.

Upon noting all such surrounding factors, if this reply in the cross examination are perused, it is clear that it is incapable to create any reasonable doubt against the prosecution case that the victims had sustained burn injuries during the communal riots which was caused by the accused members of unlawful assembly according to the prosecution case. The injuries were caused on account of the offences committed by the accused. In fact, except accused who were members of unlawful assembly, none another has been alleged to have been committing the offences against the Muslim victims. It is a proved fact that the accused had intention to do away Muslims, the injuries were known to the accused to had been such which were sufficient to cause death of the victim in ordinary course of the nature. No reasons were given by the victim themselves to cause them serious grievous hurt by

weapons or to commit attempt to murder them. The hurt to the victims have been proved to have been caused because of the act of the accused. It is therefore, coming within the purview of Sec.307 of I.P.C.

[X] In case of P.M. of Sakinabanu Mehboobbhai, the history of burns on 28/02/2002 stands revealed on record of the case. In case of Sakinabanu Babubhai Bhatti she was admitted in the hospital on the date of the occurrence and who had died 10/03/2002. It is clear that the death of the deceased was on account of the burn injuries and its complications. (The case of Sakina Babubhai Bhatti is a fit case to establish that there were attempts to commit murder in the morning occurrences as, the case of Sakina Bhatti is one such glaring illustration.)

All these cases where the postmortems are of identified dead bodies, the death had occurred during the treatment since, these 13 persons had died succumbing to injuries, it is clear that their injuries were so severe in nature and it was a clear attempt of murder. As a result all these illustrations fall within the category of the offence punishable u/s.307. All deceased had injuries on the vital parts of their bodies. Looking to their address, name, etc. it is becoming very clear that the deceased were Muslims and looking to the date sustaining injury and the date of admission in the hospital, it stands proved that all these deaths can safely be linked with the offences committed by the accused on the date of the communal riots.

[Y] Wherever the doctors have brought the injury certificates on record alongwith the medical case papers, the doctors have

testified that the relative of the patient has given history of burns upon perusal of which it can be safely linked with the attempt to murder or grievous hurt to have been occurred during the communal riots. It has been opined in cases of injuries that the resistance of a small child is less than an adult person.

[Z] Another aspect about the possibility of use of weapon in this case cannot be held to be bringing on record effective rebuttal or challenge to the testimony of the eyewitness of the occurrence. It is for the reason that it is a proved fact that the offences were committed by unlawful assembly, it were committed after having hatched criminal conspiracy and after having made necessary preparation on the part of the accused.

[A-1] PW-248 testifies that Aabid has sustained bullet injury in the private firing. This is clearly attempt to commit murder in the morning occurrence.

PW-191 testifies Peeru and son of Hamidali to have sustained injury in firing.

Wife of PW-79 was given sword blow who sustained fracture and was thrown in fire, sustained the injury in the noon occurrence.

Sarmuddin Khalid Noormohammad, sustained fatal injury before his death.

Supriya Marjid sustained fatal injuries before her death.

PW-191 proves 28 persons to have been taken by police for treatment of whom two women died on the way.

PW-191 took out 12 live persons from near the flames of fire and after police reached another 14 were also saved.

(IV) CHARGE OF MURDER :

[i] Introduction:

(a) According to charge at Exh.65 the charge has been framed for 96 murders. Upon scrutiny of the record also, it seems that in this case, 96 human being had done to death with intention to kill them and with sufficient knowledge that in the commission of crimes the death of the deceased victims was likely to cause.

(b) Following points are important factors to conclude points for determination.

(1) As discussed the principle of corpus delicti guides the court that to establish charge of murder, it is not essential to find out dead body. If the circumstances prove homicidal death of the deceased and if the accused is found to be involved in that, the same can safely be believed. This principle has been invoked in the facts and circumstances of the case which has been discussed at length in Part-2 of the Judgment. It is therefore, not repeated here. This is also applicable for murders of the missing and unfound victims.

(2) Over and above the principle of corpus delicti it is also necessary to take note of the fact that occurrence had taken place almost about 8 years ago and that at least since the date of communal riots different relatives or family members of the deceased have neither heard nor seen the deceased. When the deceased are not heard or seen for more than 7 years (the said deceased is missing or unfound), the presumption of death of such persons can very well be drawn by the court in the facts and circumstances of the case since 7 years had already passed from the date of missing or from the date of their disappearance. This Court, has therefore, drawn presumption of death of numerous such deceased as discussed in the previous parts of the judgment.

(3) The relatives and/or family members or acquaintance of the deceased victim of this ghastly crime have testified about murderous attack on deceased by different accused. It is a matter of fact that witnesses have prior acquaintance with the accused, eye-witness are in fact familiar with the accused since they all residing in the same locality for long and that in peculiar facts of this case, this court do not find any scope of mistaken identity of any of the accused.

(4) As has been submitted by the defence that in some cases PM report does not tally with the ocular version given by the family members of the deceased. It needs a note that during the testimony of different witnesses the cause of death of the deceased has been fully and satisfactorily established. No doubt is created in the mind of the Court and that the contents of the PM report even if does not tally with the ocular version

of the witness, the PW are not worthy of credence. In fact, the said are of no consequence mainly for the reasons that in this case brutal attack was not done only with a particular kind of weapons alone. There was huge mob of Hindus and that all of them were holding different weapons. In such situation, it is not prudent to appreciate oral evidence of the eye witness on the ground of PM report. The court is conscious about the fact that during those days of communal riots post mortem were not done minutely and that in many cases it was found that the same was reduced to mere formality only.

(5) Moreover, a weapon like sword can also give a sharp cutting wound. But at the same time if the back side of the sword is used, it can also caused wound which can be caused by a blunt weapon only. Considering this illustration, discrepancy if any in the PM report as well as in the oral evidence it is held to be not at all material.

(6) In this case, about 173 witnesses including occurrence, relative, family member, have given their oral evidence establishing different occurrences in the morning, noon and evening. Where so many Muslims were done to death. All these 173 witnesses are eye witnesses. Their evidence by and large is found by this court to be acceptable and unassailable. It is not just and proper to overlook oral evidence of so many prosecution witnesses who by positive, clinching and credible evidence established series of offence like murder, attempt to murder, grievous hurts, offence against property etc.

(7) As has been discussed in Part-2 of the judgment, looking to the population ratio in Naroda Patia area it is a matter of

fact that majority community was of Hindus whereas minority community was of Muslims. Considering that aspect also it does not sound to be prudent to accept that minority has attacked majority. Moreover, the majority community has motive to commit crime as members of majority community were very much perturbed / disturbed on account of Godhra Carnage as has come up on record in the sting operation where A-18 himself has confessed and has given a challenge that he would rise death tall at Naroda Patia so many times more than Godhra Carnage. This extra judicial confession is in fact establishing the entire occurrence to be genuine.

(8) If PM reports are seen, it is making everything clear that the deceased were fatally assaulted and that what has been proved from the independent credible evidence of the eye witness is that most of the deceased were burnt alive who then have reduced to grilled meat.

(9) Extra judicial confessional statement of A-18, A-21 and A-22 before PW-322 also gives great corroboration to the prosecution case which supports the proved prosecution case to have been proved beyond all reasonable doubts. The sting operation is found to be providing sufficient support to the prosecution case.

(10) It is true that on account of lacuna of the investigating agency weapons were neither discovered in good number nor any recoveries were effected. But then at least 5 of the accused have disclosed before the panch witnesses and as a result of their disclosure swords, scythe and 5 liter tin to fill in inflammable substance etc. have been discovered by the

investigating agency at the instance of the accused. This discovery though is negligible looking to large scaled offences committed on that day, but still it helps proving prosecution case.

(11) The accused had motive as has been proved on record.

As a matter of fact, since independent, direct and reliable oral evidence has come on record, which is strongly supported by the circumstantial evidence. Search of motive is the facts of the case, is not of much importance or it is merely an academic search. Convincing and reliable evidence has since been adduced, which is satisfactory, the question of motive becomes more or less academic as substantial evidence to prove the prosecution case is on record.

(12) Though cross-examinations were done in great detail, no material whatsoever has been brought on record to disbelieve the presence of the accused at the place of occurrence. This is getting proved by many many prosecution witnesses who apparently do not seem to have involved the accused falsely.

(13) All the Muslims prosecution witnesses are inhabitant of Muslim Chawls, opposite to Nurani Masjid and that their presence at the site is very natural since they are residents of the same area. It is also proved fact that the prosecution witnesses were residing along with their families in this Muslim Chawls and hence they can testify about offence against other Muslims since they were knowing those deceased, injured or complainant victims of the crime. They all are found very trust-worthy and natural.

(14) In the case on hands, value of injured eye-witnesses is on high pedal. The principle is that no injured would substitute a wrong person naming him as a assailant by saving real assailant.

(15) The injured prosecution witnesses of Khancha occurrence, of the morning occurrence and of the noon occurrence were either complainant or were injured or in any case were sufferers of damage or loss to their properties. It cannot be believed that they were out to falsely rope the accused. The circumstantial evidence on record is worthy and credible which is supporting the version of the prosecution witnesses about participation of named and identified accused. Eye witnesses have attributed specific overt-act to the named accused and in the facts and circumstances of the case that seems to be a truthful account of series of occurrences took place on that day.

(16) This Court did not find defence plea very much impressive and full of probability wherever this court found the plea to be satisfactory and found it that a reasonable doubt has been carved out, the benefit thereof has been granted to the respective accused without fail.

(17) In this case, it has been proved beyond reasonable doubt that the accused have attacked on the victims, on the deceased, on the eye-witnesses in a pre-planned manner by use of deadly weapons and criminal force at their command.

(18) As discussed earlier, the incident of Godhra carnage has

prompted the accused to form an intention to commit more murders for murders of Kar Sevaks, to destroy and damage and ruin the properties of Muslims. Their knowledge about consequence of the act and omission can safely be inferred. It is a matter of common experience that every person who throws some one in flames or set a person on fire after pouring or sprinkling inflammable, is aware that this is likely to cause death. In the same way, there are many cases of head injuries, stab injuries etc. in which case also the accused is inferred to have knowledge about the likelihood of the death of the deceased.

(19) The accounts of eye-witnesses are consistent and reliable. Moreover, considering the number of victims burnt alive mercilessly it is evident that large number of persons must have participated in the crime.

(20) The defence plea of alibi has been raised by Accused No. 37. It is already opined that this defence is not found to be satisfactory and probable. Considering the distance between Gandhinagar and Ahmedabad it is hardly of 30 km. That in fact Gandhingar and Ahmedabad are twin cities. The principle of alibi is to the effect that the accused has a burden to discharge and prove his absence at the site of offence. This is because the accused possessed special knowledge about his own movement. In the instant case, A-37 has miserably failed to prove her plea of alibi. Hence, the same becomes a lame defence. In the opinion of this court, evidence adduced by way of oral evidence, documentary evidence and upon considering the circumstantial evidence, are all satisfactory, credible, clinching and truthful evidence and basing upon this evidence,

it is safe to convict the accused against whom the offence of having committed murder, attempt to murder etc. stand proved.

(21) This Court is of the humble opinion that all the 96 murders which took place on that day at the site of Naroda Patia, connect the accused with the crime and the guilt of the accused, who were members of unlawful assembly then, satisfactorily stand proved beyond all reasonable doubts on the record of the case.

(22) While discussing other points of determinations, for the sake of convenience this court has divided and classified occurrences into three heads, viz. morning occurrence, noon occurrence and evening occurrence. Morning occurrence is the occurrence which took place at Nurani Masjid, at the gate of S.T. Workshop and in the Muslim Chawls situated opposite to Nurani Masjid.

Noon occurrences are the occurrences which took place in the Muslim Chawls at Jawaharnagar or Jawannagar, etc.

Evening occurrences is mainly of Khancha Occurrence. The site of these occurrences is at the end of Muslim Chawls and at the beginning of Hindus societies namely Gangotri Society and Gopinath Society.

(23) What is notable is that all the offence against human body except rape and gang rape, have taken place throughout the day. All the proved offences against the property without any exception had been committed during the entire day.

The offence relating to religion were committed only in the morning at Nurani Masjid.

Except these offences all other offences, including hurt, grievous hurts, murders, attempt to murder, mischief, etc. were committed throughout the day. Therefore, it is just and proper to hold all those accused guilty who were members of unlawful assembly on any part of the day except for offences relating to religion because evidence suggest that in all parts of the day murders were committed, attempt to murder were committed, hurt and grievous hurts were continuously committed. It therefore, makes no difference as to in unlawful assembly, at what time the accused became a member. Time is not important except the offences of rape, gang rape and offences relating to religion, etc. are concerned. For the offences which were committed throughout the day whether a person was member of the unlawful assembly at any time during the day shall have similar effect. Even if the accused proves to be member only once in the entire day, it is sufficient to hold him guilty for hurt, grievous hurt, offences against property, murder and attempt to murder, if the kind of offences were committed when he was present and was participating in the unlawful assembly.

It is clarified that no accused is held guilty except for his presence and participation in the unlawful assembly. The substance is if A-4 is proved to be a member of unlawful assembly, only in the noon and if it is proved that in the noon no offence under particular Section has been committed, then, A-4 is not held guilty under that Section r/w. Sec.149 of I.P.C.

The accused who were conspirators, they are held guilty for the offences of the entire day, hence, for every proved offence these conspirators are held guilty for the proved offence r/w. Sec.120-B of I.P.C.

(24) Overall facts and circumstances of the case undoubtedly prove that murder of Hasanali, Mohammedsafik, Khadir and mother for Tarkishbibi of PW-259 were committed in the morning occurrences about before 12:00 noon.

Murder of Moiyuddin, son of Mullaji, Aiyub and lame wife of PW-74 etc. were undoubtedly committed in noon occurrences.

PW-158 is eyewitness of 13 murders. 9 family members of PW-156 were done to death. Murder of Sharif and Siddique took place, 6 murders have been proved by PW-198 which all were committed at the Khancha occurrences. Hence, for these offences, every accused who becomes member of unlawful assembly on that day even once can safely be held liable for commission of the offences of murder, attempt to murder committed by that unlawful assembly.

It is nobody's case that except these accused and their companions accused, any other person was present at the site. Eye-witnesses have identified the accused as authors of the crime. Now, therefore, it is not important at which hour of the day the accused was member of unlawful assembly and when he discontinued his membership. What is important is that in all the three occurrences similar offences were committed. Considering this discussion, there is, in fact, no need of any

further clarification. At least 9 of the accused are common in all three occurrences. Unlawful assembly had committed offences in the same transaction during the entire day. Considering this discussion, it is not essential to link up the presence and participation of the accused with the hour of offence for the offence like murder committed throughout the day. During the entire day similar offence of committing murders were repeated.

(25) Death of different 96 Muslims, inclusive of deaths proved by inquests, P.M. etc., deaths proved otherwise, deaths of missing persons and deaths of unidentified dead bodies stand proved to had been caused at the date, time and site of the occurrence beyond all reasonable doubt as has been mentioned in great detail at Part-4 of the judgment. The death of all the deceased victim is undoubtedly proved to be consequence of the act and omission committed by the accused.

On account of Godhra Carnage preparation was made by the accused and common object was shared by all the accused. Their intention was to kill maximum Muslims, as is clearly established on record. Knowledge of the accused is matter of judicial inference. Hence, accused are held to be knowing that their act was likely to cause death of the victims and that by causing head injury or stab injuries etc. it is sufficient in ordinary course of nature to cause death of victims.

(26) Death of 96 deceased Muslims (including murder of Kausharbanu as has been discussed and decided while deciding Point of Determination No.10) are very much part of proved fact on record. All those deaths were neither suicidal nor

accidental but they were purely homicidal deaths.

The defence has failed to prove any exception to section 300 of IPC in the facts of the case and that all the essential ingredients for the offence of murder is very much established on record of the case. Hence, it is safe to hold that about 96 Muslims were brutally murdered during communal riots on that day of the offence. The list of and the calculation of all the said 96 deceased has been placed on record in Part 4. Hence, repetition is avoided.

(27) It is true that A-37, being a kingpin of the entire conspiracy, has played a very active role in instigating the accused. But she herself has not killed any of the Muslims. In the opinion of this Court, her act and omission of instigating Hindus, words spoken by her etc. have since come on record, it is clear that those words were sufficient to cause instigation to Hindus. She has worked in pursuance of conspiracy which shows her pre-mediation or pre-consort with the co-accused. Her presence at the site of offence, selection of site of offence to be Muslim Chawls and religious place of Muslim and her overall conduct including false explanation given by way of further statement, are all proving and linking A-37 clearly with the abetment of offence committed by co-accused. She is therefore, held guilty at par with the offenders who have committed the offences of murders, attempt to murder, etc.

(28) Over and above A-37, other co-conspirators have also abetted and some have executed conspiracy. She too has executed conspiracy, but her way of executing conspiracy was by abetting the commission of murders by the co-accused. She

has instigated Hindus. Her act and omission in pursuance of conspiracy and her abetment have all been proved beyond all reasonable doubts on record.

Hence, over all, all those accused, who were members of unlawful assembly, are held to be authors of crime of murder and attempt to murder by invoking principle of joint liability. Even A-37 is also liable for the offence of murders of 96 Muslims. This court firmly believes that had the instigation not been done by A-37, had the offence been not abetted by A-37, the communal riots would not have spread at Naroda Patia at such large scale.

It be noted that the punishment to be imposed to the 18 accused who were members of unlawful assembly in the evening occurrence has been included in the punishment to be imposed for different murders committed in different occurrences. Hence, separate sentence would not be required to be imposed upon the 18 accused for the murder of Kausharbanu which is to avoid repetition.

(29) Charge U/s.307 of I.P.C.: Attempt To Murder :

(a) There are numerous illustrations by which it gets confirmed that several offences of attempt to murder have also been committed in the morning, noon and even in the evening occurrences. In the evening about 28 victims of crime were taken to Civil Hospital by the police (PW-274 and others) for their treatment, who were lying, waiting for death at the khancha. All these 28 victims have sustained grievous hurt. During the treatment 9 among them had died. Some of them

had to remain for a long period in the hospital. This factor needs to be kept in mind which proves the offences of attempt to murder.

(b) As far as assault and attack, on these 28 persons in the evening, on some of the persons in the noon; those who were attacked at Jawannagar khada at about 4:00 p.m., those who were inside the houses at Badarsingh Ni Chali, and when the Chali was burnt and when they were attempted to be burnt alive, and when in the morning the Muslim victims, while were inside their houses, and when the houses were burnt and the victims inside were attempted to be killed and burnt alive, it seems that these are the illustrations of the offences committed against the victims which can fall in the category of attempt to murder.

(c) These offences were committed throughout the day. There is not a single member of unlawful assembly in whose presence and with whose participation, the offences u/s.302 and u/s.307 were not committed. However, A-4, 28, 30 are guilty only for noon occurrences (r/w. Sec.149). A-28, 30, 53 and 60 are guilty only for evening occurrences (r/w.Sec.149), whereas, the other accused viz. the 27 conspirators, are held guilty u/s.302, 307 r/w. Sec.120-B and 26 conspirators - who became also the members of the assembly are held guilt u/s.302 r/w. Sec.149 as the case may be.

(d) In all these cases, intention to kill is apparently proved. The evidence on record shows that inflammable substance, kerosene or petrol was sprinkled or poured, in some of the cases there is evidence that chemical is poured of sprinkled

and the person were burnt alive. This proves the intention to kill, beyond reasonable doubt, in the mind of the attackers. The attack in most of the cases was on vital part of the body of the victims which is a strong circumstantial evidence to establish intention in the minds of the rioters.

(e) It is a proved fact that bodily injuries were caused to the victims. The victims were injured by a person who were armed with dangerous weapon. In such case the knowledge of the person who attacks cannot be disputed because every person who is holding a dangerous weapon and using the same is knowing that the use of the said weapon can endanger the life and can cause death.

(f) Long stay of the victims of these crimes in the hospital, need of plastic surgery, nature of injuries on the victims, 9 of the victims died during the treatment, are all sufficient circumstances to indicate that there was attempt to murder these victims viz. 9 who had succumbed to the injuries, those who were burnt alive in the noon at the Badarsingh Ni Chali, those who were burnt alive in the morning occurrence while they were inside their dwelling houses are clearly proving the offence of attempt to commit murder.

(g) An intention or knowledge of committing murder, is when, too clear on record, the vital ingredients to bring home the guilt u/s.307, stand proved.

As far as Sec.307 is concerned the consequence of the actual act done is not material, what is material is the intention or knowledge of committing murder. In fact, attempt to murder

would include an act with intention of causing death which in this case has been done in form of attack on the victims but, the intended consequence fails. The nature of the act done, the intention and knowledge which can be inferred, the circumstances under which the act was in fact done, all such which are necessary to constitute the offence of murder.

(h) Severity of injuries, nature of weapon, manner of its use, the deadly weapon was used, motive for commission of crime, attack on vital part of body are all the factors to bring home the guilt u/s.307.

(i) In the facts and circumstances of this case, the act committed by the accused with an intention to kill the deceased and injured was capable of causing murder and for those who could survive, it was an attempt to murder because it is clear that the death of even those who have been survived could have been occurred but, did not occur because of the circumstances beyond control of the accused.

(j) Those who were injured in the morning occurrence, noon occurrence and in the evening occurrence were taken for treatment in the hospital, many of them had died in the similar kind of attack, those who were survived would also have died, but, for the circumstances beyond the control of the accused, they could survived. Therefore, it is a clear case of commission of offence even u/s.307 of the Indian Penal Code.

(k) To bring home the guilt u/s.307, all essentials of murder except death of the victim are necessary to prove the offence. In the facts and circumstances of this case, all the ingredients

in the case of victims who have survived during the treatment do exist. Moreover, it is clear that the act complained of, of killing the deceased by use of weapon, by burning them alive, setting them on fire, by pouring kerosene, sprinkling inflammable substances, using gas cylinder blasts, using fire arm, using liters of kerosene, carts of kerosene in committing the offences are all speaking evidences to prove that the accused who had formed an unlawful assembly are the authors of the crime. Neither there is any allegation nor any evidence to believe that any other person other than the accused named and identified were present at the respective time when the offence was committed at the site. Hence, it stands proved that the offences were committed by the accused who were the members of the unlawful assembly. As discussed, all the acts and omissions were committed with intention and even knowledge though, there is need of either intention or knowledge, but then, the knowledge can also be inferred in the facts of the case and the intention is apparent.

(l) The accused have committed the offence in the circumstances that if the death would have been caused, the accused would have been guilty of murder but since, grievous hurts were caused which were clearly endangering the lives of the victims and that which could have taken the lives of the victims, the accused became liable for the punishment of offence u/s.307 and all necessary ingredients stand established in the offences committed by the accused. Hence, the charge u/s.307 is also brought home successfully by the prosecution by proving the case against the accused beyond all reasonable doubts.

(m) Considering the fact that this offence has been committed in the morning, in the noon and even in the evening the 26 accused who formed unlawful assembly in the morning occurrence, the accused who formed unlawful assembly in the noon and the accused who formed an unlawful assembly in the evening are all held liable to be punished u/s.302 and u/s.307 r/w. Sec.149 of I.P.C. as the charge against them is satisfactorily brought home beyond all reasonable doubt.

(n) Over and above the 26 accused who have formed unlawful assembly in the noon and in the evening are A-4, 28, 30, 53 and 60.

In the evening, A-4 discontinued 28, 30, 53 and 60 were present in the evening occurrence as A-53 and 60 have joined themselves in the evening occurrence. That being so, this Court is of the firm opinion that the following accused need to be held guilty and are punishable u/s.302 and u/s.307 r/w. Sec.149 of the Indian Penal Code and for conspirators r/w. Sec.120-B.

[a] GUILTY :-

This Court, therefore, holds that A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (27 live accused) are held guilty for commission of offence under section 302 and Sec.307, both read with section 120-B for their act as conspirators. (27 live accused).

[b] BENEFIT :-

Accused No.3, A-4, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-28, A-29, A-30, A-31, A-32, A-36, A-43, A-48, A-49, A-50, A-51, A-53, A-54, A-56, A-57, A-59, A-60 and A-61 have been granted benefit of doubt qua charge under section 302 and Sec.307, both r/w. Sec.120-B of IPC. (34 live accused).

[c] GUILTY (For The Occurrence They Were Present):-

Accused No.1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused) are hereby held guilty for commission of offence under section 302 and Sec.307, both read with section 149 as members of unlawful assembly. (31 live accused).

[d] BENEFIT :-

Accused No.3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 have been granted benefit of doubt for the charge under section 302 and Sec.307, both read with section 149 of the IPC. (30 live accused).

Points of Determination No.12 and 13 are jointly answered accordingly.

XIV-A. Point Of Determination No.14:

Ques. Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any accused has committed an offence u/s. 135 (1) of the Bombay Police Act or not?

(With reference to Notification EXH.1579 of the Police Commissioner, Ahmedabad.)

XIV-B. Discussion on Point of Determination No.14:

[i] The accused have been held guilty u/s. 144 of I.P.C. r/w. relevant provisions. Sec.144 has an ingredient of possessing weapons which even is the ingredient to prove the offence under this section, and when the notification issued by the then Police Commissioner has been violated. The then Police Commissioner has issued notification brought on record vide Exh.-1579. It is the position of fact that the accused have been held guilty u/s.144. They have violated the notification. To avoid duplication, the accused who have not formed unlawful assembly in any of the occurrence are not required to be sentenced u/s. 135(1) of the Bombay Police Act, but however, the 31 accused who were members of the unlawful assembly are required to be held guilty for commission of offence u/s.135(1) of the Bombay Police Act for keeping the different lethal and deadly weapons in their possession on the day. The gist of this offence is possession of weapon with the accused. The possession of the weapon with the accused can be proved by oral, documentary or circumstantial evidence on record. The possession of the weapon was proved to be with every accused. It is a proved fact through the oral testimony of many of the

prosecution witnesses that every rioter was holding one or another weapon and that all those weapons were deadly and lethal. Those weapons as have been included in Notification EXH.1579 were found to have been with the accused who were members of the unlawful assembly hence, all those accused who were members of unlawful assembly can safely be held guilty for the commission of crime under this chapter as well. As far as point of determination No.2 and more particularly the part of the discussion made for Sec.144 is concerned, it has been concluded that the 31 members of the unlawful assembly were guilty u/s.144. Hence, the same 31 accused shall also be held guilty under this section.

[ii] The offence u/s.135(1) of the Bombay Police Act has been committed by the accused who have been held guilty u/s.144 of I.P.C. r/w. Sec.149 of I.P.C. but, to avoid duplication, this Court is not to sentence them but however, this issue needs not be replied in the affirmative by deciding guilt for this offence but, separate punishment under the section is not necessary in the facts of the case. 31 accused are held guilty u/s.144 and remaining 30 accused shall get benefit of doubt. It is clarified here by that the offence under the B.P. Act should not be read with Sec.149 of I.P.C. Hence, the accused will be held guilty only u/s.135(1) of the B.P. Act. It is therefore, held that :

A-1, A-2, A-4, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (31 live accused), all members of unlawful assembly are held guilty for the offence u/s. 135(1) of the B.P. Act.

A-3, A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-36, A-37, A-43, A-48, A-49, A-50, A-51, A-54, A-56, A-57, A-59 and A-61 (30 accused) have been granted benefit of doubt qua charge u/s.135(1) of the B.P. Act.

XV-A. Point Of Determination No.15:

Ques. **Whether the prosecution proves beyond reasonable doubt that on the date, time and place of the offence, any of the accused has caused disappearance of evidence of offence to screen the offenders or not? Or was it committed by unlawful assembly or in pursuance of the conspiracy or by abetment or by instigation, or not? If yes, which accused are held guilty for the offence?**

(With reference to Sec.- 201 of I.P.C., Sec.- 201 R/w 149 , 201 R/w 120-B of I.P.C.)

XV-B. Discussion On Point Of Determination No.15 :

[i] <u>Qua Sec- 201 of I.P.C</u>.:

(a) The charge u/s.201 of the Indian Penal Code has also been framed. To bring home the guilt u/s.201, the prosecution is required to prove that (i) an offence has been committed; (ii)

the accused knew or had reason to believe the commission of such offence; (iii) that with such knowledge or belief he caused any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment.

(b) On plain reading of this section, it appears that this section has a relation with a concept that not the accused himself but, somebody else would commit the offence and the accused would screen the offender from legal punishment. This section is not related to the allegation when, the accused himself is destroying the evidence.

(c) It is notable that in this section *mens rea* is a very important ingredient. The accused must have an intention in his mind to screen the offender. That intention being the heart, it is clear that when the person against whom the charge is of the commission of the offence or when the person facing the charge is himself a principal offender, Sec.201 would not have any application.

(d) Secondly, whatever the accused have done over here, is not to screen any offender. It is nowhere emerging on record that the accused had such intention. The accused have different motive, different object and different purposes; main among which is murders for more murders, committing offences against property, relating to religion, etc. The *modus operandi* at Godhra was burning alive the Hindus and therefore, in these riots, with a view to settle the account, the modus seems to have been chosen to burn alive Muslims. That being the situation, the intention is to settle the score or to

take revenge with the Muslim Community or at the most to terrorize the Muslim Community. The intention is not that to screen any of the offender. Since there is no *mens rea* in the act and omission committed by the accused, this Court is of the opinion that Sec.201 cannot have any application. Hence, it is held that A-1 to A-62 (except A-35 who was abated) all the accused are hereby, **granted benefit of doubt qua the charge u/s.201, r/w. 149 and 201 r/w 120-B of the Indian Penal Code.**

XVI-A. Point Of Determination No.16:

Ques. What is the final order ?

XVI-B. Discussion On Point Of Determination No.16:

(i) As per the final order.

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CHAPTER-II: DIFFERENT INCIDENTS IN GENERAL WHICH TOOK PLACE ON THE DATE, TIME AND SITE OF THE OFFENCE

(1) Introduction :

(a) In light of the overall facts and circumstances of the case, it is a matter of hard reality that many incidents have taken place and many eyewitnesses have noticed the three occurrences, but at the same time, many victims have migrated, many are not found, many complaints have not been

investigated, and many have not been further persuaded by the respective complainants. Hence, many incidents could not be brought on book. Like the incident of son of Mullaji and many such incidents, it has so happened that through the oral testimony of the prosecution witnesses, the occurrence did come on the surface, but, as a matter of fact, for the said death, no complaint in fact has been filed.

(b) As far as murders are concerned, it is essential to hold that how many murders were committed. As is held about 96 murders have been committed on that date of communal riot at the site of the offence.

(c) In the facts and circumstances of this case, it is not principally essential as to what were the names of those deceased (It is however notable that at the end of Part-5 under the head of final conclusion even the names of the deceased Muslims as proves on the record through testimony of different PWs have been enlisted). Rather, it is essential that how many Muslims died on that day on account of the occurrences. It seems from the record that 96 Muslims were done to death on that day. The oral, documentary and circumstantial evidence on record is connectable with the Naroda Patiya massacre.

(d) At Part-5 of this Judgement, this Court has held as to which deceased had been proved to have been murdered on that day. About 68 P.M. of unknown persons of the area have also been part of the record and as discussed all these murders can safely be linked with the occurrences committed by the unlawful assembly. All these deaths can safely be held to be murders on account of the occurrences and in each of the case,

the ingredients of Sec.302 stand proved to be existing in the facts and circumstances of the case.

(e) As has been discussed while deciding the relevant point of determination different PWs have identified different accused proving their presence and participation in commission of offences in different occurrences. It is therefore, held that those accused were forming unlawful assembly at the relevant point of time and that all the offences were committed jointly by the members of the unlawful assembly. It is also held to have committed in pursuance of the conspiracy, on account of the instigation and abetment provided by the conspirators because of which the unlawful assembly came into being to execute the conspiracy.

(f) Different oral evidence, panchnamas of damages, inquest and identification panchnama alongwith the discovery panchnamas and the ircumstantial evidence prove the prosecution case beyond all reasonable doubts.

(g) It needs a note that in all these different occurrences, prosecution witnesses have involved different accused who were forming unlawful assembly at the relevant point of time. As classified in three different occurrences, the unlawful assembly has committed all the offences committed at the relevant point of time considering which, the members of unlawful assembly have been held jointly liable for commission of the crime.

(h) Wherever the prosecution has failed to prove its case beyond reasonable doubt, this Court has granted benefit of

doubt to the accused.

(2) <u>Certain incidents need to be discussed :</u>

A. Incident of Murder of Parents of PW-65 :

PW-65 has deposed as an eyewitness of the murder of his old and feeble parents named Abdul Wahab and Hanifa Khatun who were coming from Hussain Nagar to the road on that day, at which point of time about 02:00 p.m., the violent mob, by sprinkling the inflammable substance on them, has burnt them alive who died in the occurrence on the date, time and place in the noon occurrence. Their murders have been proved to have been caused by unlawful assembly at the site under abetment and instigation of the conspirators like A-37. Since this is the noon occurrence, A-1, 2, 4, 5, 10, 21, 22, 25, 26, 28, 30, 41, 44, 46 and the deceased accused being the members of the unlawful assembly, they are held guilty for commission of these murders.

B. Incident of private firing and police firing :

(1) Police Firing As Has Been Deposed By Many Police Witnesses like PW-173, 200, 202, 213, 234 and 239 etc. that the police firing did take place in the morning occurrence.

If testimony of PW-274 i.e. the first I.O., PW-277 his superior officer and PW-294 his D.C.P. is read, then, the police officers only speak of two deaths on account of police firing of which only one was of a Muslim victim. PW-294, at paragraph No.29 speaks of two deaths but, at paragraph No.20 speaks of only one death. PW-277, at paragraph No.27 speaks of one

Muslim death and one Hindu death and PW-274 admits at paragraph No.128 that in the police firing one Hindu and one Muslim died. Thus, in nutshell, according to the senior most police officers, only one Muslim had died in the occurrence. PW-274 clarifies that no private firing was done. But then million dollar question is if only one death of Muslim was caused on account of police firing, then the testimonies of different victims which prove and specify certain Muslim deaths and certain serious injuries to Muslim victims, should be connected with private firing ? The principle of probability counsels that the only one brilliant possibility is that of the remaining deaths, proved to have been caused because of firing and the injuries of the victims proved to have been caused because of firing, can only be connected with private firing. As has been discussed in the topic where injuries have been discussed, it becomes clear that numerous bullet injuries have also been caused. Now therefore, if these police officers are to be believed, these injuries would only be linked with private firing.

(2) PW-192 has stated that about 5 Muslims had died in the police firing. The possibility of police firing to have been done cannot be ruled out. But, the police officers ought to have kept proper record to show that there was only police firing and that all the bullet injuries were only and only as a result of the police firing and nothing else. Since this record has not been kept and or produced before the Court, it does not come on the record as to how many police firing really took place and who really did it. It is not found safe to believe only oral version of police officers on record whose investigation is under shadow of doubt. They ought to have kept proper account of firing but

nothing is tendered on record hence it can safely be concluded that if the police would have been sure of only police firing to have taken place on that day, it would have given the record to the Court. For this very reason, even in case of serious bullet injury, the police has not collected bullet remains from body of the victim from the hospital and sent it to FSL. This attitude is not merely to help the accused, it is also to see to it that show of law and order position on that day at Patiya may not be exposed as worst.

(3) The victims of crime like PW-104, 165, 167, 149, 192, 176, 191, 255, 136, 52, etc. have deposed that there was private firing by A-2, 20, 41 and 44 as well. PW-105, 147 and others testifies death of Aabid, Hasan and injury to Khalid etc. in private firing. PW-165 has given history in the hospital that the bullet injuries sustained by him was on account of attack by opposite party, this also supports the case of private firing. PW-191 testifies Peeru and son of Hamidali have sustained injury in firing. In the background as mentioned above, this Court is inclined to accept that some of the accused even did private firing on that day at the site. Some of the injured victims have sustained serious bullet injuries and some of them have sustained meager bullet injuries. Neither the bullet which was found from the body of the injured victim has been kept by the police for investigation or has been sent for scientific investigation or no formalities or no procedure has been done as discussed. This would have ruled out the testimony on private firing. PW-105 also probabilizes private firing and injuries having been sustained to Aabid and Mustak in the morning occurrence.

(4) Considering the fact that the prosecution witnesses have firmly stated about the private firing to have taken place, including naming the accused who were in fact, doing private firing this Court is inclined to believe the private firing as well. However, there may be police firing as well.

(5) From the testimony of PW-104, 149, 73, 105, 136, 167, 169, 170, 174, 177, PW-52, 184 and PW-204, it is getting confirmed that there were also incidents of private firing by some of the accused at the site of the offence. According to the prosecution witnesses, A-2, A-41, A-20 and A-44 are the accused for whom many of the witnesses have stated that they did private firing and they were possessing fire arms.

(6) In the sting operation, A-18 has confessed that he had collected 23 fire arms on the intervening night of 27/02/02 and 28/02/02. The use of the said fire arms is also admitted to have been done for bursting the gas cylinders in the Muslim houses.

(7) There is nothing on record to doubt the allegation of private firing on that particular day by the accused. On the contrary, the conduct of the police is so unnatural and unusual that this circumstantial itself is enough to draw the inference that because the police was knowing the fact of private firing, it is made conscious efforts to see to it that the truth should not be revealed.

(8) Considering all the said, and when, about 13 witnesses are telling about the possession of fire arms with the accused and the private firing in fact, having been done at the site, this Court is inclined to believe it when it gets corroboration from

the extra judicial confession of A-18 and that looking to the intentions and objects of the accused, to terrorize the Muslims, to do away maximum Muslims, it is very much probable that the accused did possess fire arms and that some of them used the fire arms. This way in which the affairs were handled by the police it also probabilizes the private firing.

(9) It does not seem to be just, proper and prudent to disbelieve the testimony of the witness on the ground that the said has not been proved by any documentary evidence, panchnama, injury certificate or F.S.L. as, in the peculiar facts and circumstances of this case, the previous investigators were very much inclined to not expose certain accused and their short coming and in that exercise, it is obvious they would not care to establish that there was only police firing on that particular day. Not believing the PW for improper investigation of PW 274 would amount the injustice to be perpetuated. How, the victims can be held liars for the faults of previous investigators.

C. The incident of death of Kaushar (at point for determination No.10) and the incident of different rapes and gang rapes have been discussed in all its details while discussing and deciding the relevant point for determination respectively at No. 10 and 11. Hence, the same need not be repeated.

D. All the 58 murders of the evening occurrence at a single site and other murders have been discussed under the head of 96 Murders for which as has been proved on record, the members of unlawful assembly present and participated at

different occurrences has been held guilty.

E. Incident of Aiyub :

(1) PW-140 has testified to have seen that out of fear Aiyub jumped from terrace who was given scythe blow and burnt in the rickshaw of the PW.

(2) PW-149 has testified to have seen the similar fact.

PW-156 corroborates the incident. PW-140, 156 and 149 prove the incident of murder of Aiyub in the noon occurrence which was obviously by the unlawful assembly as stands proved.

F. Incident of Outraging Modesty of Small Muslim Girls :

PW-142, 112, 106, 162, 203, 228 have deposed to the effect that the incidents of outraging modesty of small Muslim girls in fact, took place during the riots. There is nothing on record as to who were the victims of such outraging. It is possible that the PWs do not know the tormentor but when they even do not know the name of such small girls, it is not prudent to accept that such incidents have taken place.

G. Incident of Burning Small Children Alive in Fire :

PW-106, 72, 113, 114, 151, 162, 203, 111, the occurrence PW, so many prosecution witnesses who in fact, involved the dead accused with corroboration of the extra judicial

confession of A-22 read with the injury certificates, it stands proved that the incident of burning small children alive by throwing them in fire, did take place throughout the day and more specifically in the evening occurrence.

H. Murders of 96 Muslim victims in the riot :

(1) It has been proved by the oral testimonies of different prosecution witnesses that during the entire day, about 96 Muslims were done to death. As is clear on record, different witnesses testify about murders of different victims as an eyewitness which has been enlisted at the end of Part-5. In case of some of the dead bodies, the dead bodies were identified, burial receipts of some deceased have been collected.

As has been discussed at length at Part-4 of the judgment, there are different panchnamas which were drawn for identification of the dead bodies and for inquest of the dead bodies postmortem reports of the unidentified dead bodies are also on the record and even 68 postmortem reports of unidentified dead bodies are also on the record. It is discussed at Part-4 and 5 as to how the death toll of 96 persons has been reached. It is not repeated.

(2) If the entire oral evidence is cursorily seen, then, it is getting clear that about 13 dead bodies were such whose P.M. Report is on record as known dead bodies. About 12 dead bodies have been proved with the help of inquest panchnama, identification panchnama etc. about 3 deceased have been reported as missing persons. Thus, in all, 28 deaths of different

victims stand proved. It is then after, about 68 postmortem reports if are taken into consideration alongwith 11 burial receipts as a proof of death of different Muslim Dead bodies to have been burried, then, the death toll comes to that of 96 deaths.

(3) Roughly, seen about 84 prosecution witnesses, prove presence and participation of deceased accused Guddu, Bhavani, Dalpat, Ramesh and Raju in the Murders of different victims. Mother Kudratbibi and other 7 family members of PW-72 were done to death by burning them alive in the evening occurrence, the wife of PW-74 who was lame, was subjected to fatal assault and was burnt alive, children, niece and mother-in-law of brother of PW-111 were done to death who were 4 in number, mother of PW-212 was killed by use of deadly weapons in the evening occurrence, the eldest son Shakil of PW-174, son Mohammad Yunus Mohammad Razzak Ansari of PW-247, husband Mohammad Aiyub Shaikh of PW-231, wife Lalbi, children and grand children of PW-156 were done to death in the evening occurrence. Old and feeble mother of the PW-259 was killed by burning her alive throwing her in the burning rickshaw. Mother, maternal uncle and other family members, in all 5 family members were done to death of PW-106. PW-158 has seen 13 murders in the evening occurrences, he has seen 12 victims to have sustained injuries, out of the 12 injured persons, two victims had succumbed to death on the way to the hospital. PW-209 is also an eyewitness of murder of Siddique, PW-191 has witnessed the murder of his wife Bilkish, daughter Kherunnisha, son Hamidraza and he has also witnessed the murder of 58 persons at the khancha occurrence in the evening.

(4) In case of many of the deceased like son of PW-174, father of PW-110 and 146, wife of PW-74, wife of PW-92, daughter of PW-93, family of the neighbour of PW-93, children of PW-111, mother of PW-259, father of PW-78, brother of PW-161, wife of PW-240, husband of PW-246, etc. since the concerned PW have testified to have seen their family members dying in the occurrence before about 8 years and that since the family members have not seen or heard them for atleast last 7 years which family member would have heard of seen by them, had they been alive, this Court has presumed that these deceased victims and others had died in the occurrences which firmly stands corroborated in light of 68 P.M. Notes, burial receipts and the panchnamas on the record of the case.

(5) All the 96 murders had been committed by the accused as members of unlawful assembly while sharing common objects in the three occurrences of the day.

I. Injuries To Different Victims :

(1) About more than 125 victims themselves and/or their family members have sustained different injuries. Some of which have been held to be simple, some of which were grievous and some of which were also attempt to murder. The details of it has been discussed while discussing Point of Determination No. 9 and at Part-4 in the Chapter for injuries.

J. MORNING, NOON & EVENING OCCURRENCES :

As has already been discussed, different incidents took place during different occurrences. The tormentors were

members of unlawful assembly which incidents are included in which occurrences has been described and decided at length in Chapter-I of Part-5 of the Judgement. It has also been specified there that wherever in the Judgement, these three words have been used those words shall be understood in the meaning given at Part-5 of the said three words. That being so, it has not been repeated over here.

K. Damages Caused on that Day :

The details on this point has been discussed and decided under the heading of Point of Determination No.7. Suffice it to say here that, numerous PWs of about 93 PWs like PW-2, 37, 40, 52, 59, 60, 62, 73, 79, 83, 86, 90, 91, 92, 93, 94, 104 to 108, 111, 114, 117, 136, 138, 141, 143 to 145, 147, 148 to 150, 156, 157, 162, 171, 173 to 175, 177, 179, 181, 183, to 185, 187 to 189, 192, 201, 203, 213, 219, 227 to 231, 233, 236, 238, 242, 246, 249, 255, 257, 258, 261 and about 25 occurrence PWs etc. have testified to have suffered damages at their houses, at their shops, at their carts, at their cabins. Some of the PWs have also testified about their vehicles having been burnt and the kerosene carts were looted and used to burn the Muslim Chawls, the kerosene carts lying near Nurani were used to burn Nurani Masjid and the kerosene lying in big tins in the rationing shops of Muslim chawls was utilized to torch at Muslim chawls. Many of these witnesses have stated that their everything was ruined, destroyed, ransacked by the men of the mob on that day, the properties were burnt by throwing kerosene inside it, the damages to the Nurani Masjid have also been proved, 30 different panchnamas are on record for damages, the panchnama Exh.1556 is on record to bring on

record the V.C.D. shot on 11/03/2002 exhibiting the damages to have been caused at the site, the panchnama Exh.1749 in 5 parts is on record which is also proving damages, the letter of I.O.C. Exh.2391 is on record by which it is clear that about 25 gas cylinders were taken away by the mob from the Uday Gas Agency. Numerous occurrence witnesses, numerous other witnesses have also proved the damages to have been sustained, many many Muslim Chawls have been burnt altogether, the extra judicial confession of A-21, A-22 and A-18 also prove the damages, A-18 has collected 23 fire arms as confessed, those fire arms have been confessed to have also been used to blast the gas cylinders in the houses of Muslims, many PWs have seen burning dwelling houses all around. The amount for the damages caused goes beyond lacs of rupees as, in fact, entire area where Muslims were inhabiting, was burnt totally. It is a matter of common experience that the damages on such a large scale are not possible in sudden provocation. It is only possible with proper preparation and pre-planning which the accused have done.

L. INCIDENT OF THROWN DEAD BODIES IN THE WELL :

Throwing dead bodies in the well has though been stated by a stray PW like PW 198, but since it does not stand proved on record and since it is not safe to believe the happening as it is difficult to accept the incident of throwing dead bodies in the well when reasonable doubt is on record.

Putting in detail, through the oral evidence of Shri Tarun Barot - PW-284 and Shri Chudasama - PW-307, it is getting

confirmed on record that the Tisra Kuva situated in the maidan near Gopinath - Gangotri societies was dug upto 30 feet in presence of Late Assignee Officer Shri A.A.Chauhan and prosecution witness Shri Dastur of Fire Brigade. This exercise was done as an inquiry in the complaint of PW-107 to find out whether there were any human remains or dead bodies inside the well or not was to be done. Upon inquiry, nothing of such kind was found from there. This positive and clinching evidence on record rules out any probability of having thrown any human bodies in the well on the date of the occurrence.

This Court is aware that when such kind of manmade calamities take place, rumour, misperception, misconception and even misunderstanding do play its role and that all such rumours, misperceptions, misconceptions and misunderstandings, at times, also do not get clarified. Unless an evidence which proved the allegation beyond reasonable doubt are brought on record, this incident cannot be believed. It is difficult to act on such facts. However, the then investigating agency, seems to have tried to find out the truth in the allegation. That being so, this Court does not find any substance in the allegation that the rioters have thrown dead bodies and human remains in the dry well or in the Tisra Kuva.

M. INCIDENT OF SON OF MULLAJI :

Upon appreciating the oral evidence of PW 149 and PW 181, it stands proved that the incident of murder of son of Mullaji has taken place which has happened in the noon occurrence in fact, PW 181 has testified to have seen dead body of crippled son of Mullaji. The prosecution case qua this incident seems to be credible one and that there is satisfactory

evidence on record that son of Mullaji died in the communal riot. It is therefore, safe to presume death of crippled son of Mullaji in the communal riot on that day in the noon occurrence.

N. INCIDENT OF TORCHING ALIVE 6 TO 7 FAMILY MEMBERS INSIDE THE HOUSE OF MAJID :-

PW 73 and PW 149 are the two witnesses who testified about the said incident. There is nothing on record to believe that the witnesses are talking about any other Majid than the PW 156. PW 156 denies any occurrence to have happened in his house where, his 6-7 family members were done to death or were torched alive. In light of what has been stated by PW 156, this incident is not held to be probable by the Court to have happened at all. It needs a note that not believing the incident is one aspect of the appreciation of evidence, but, because of that, it is not held here that both the witnesses are not trustworthy. Since numerous occurrences have taken place, at some occurrences, the witness might not have properly perceived the facts. In fact, PW 149 is a star injured eyewitness and she has been believed. But, the incident of Majid is not supported even by Majid hence it is held to have been merely misperception of the PWs.

O. INCIDENT OF MURDER OF CRIPPLED MOIYUDDIN :

(1) PW 261 is the mother of said Moiyuddin who saw her son to have been injured and then burnt alive in the noon occurrence.

PW 167 corroborates the occurrence having heard the screaming of Moiyuddin. The occurrence took place at about 01:30 p.m. which was witnessed by PW 261.

In the R&P of C-Summary, the complaint of father of Moiyuddin has also been placed on record.

PW 234 and PW 177 have seen the dead body of Moiyuddin at night and PW 229 has seen the vehicle of crippled used by the deceased.

Putting all these things together, this Court is inclined to hold the incident to be credible one.

P. Certain facts and circumstances fortifying the prosecution case:

(1) PW-52 has brought on record to have seen two Muslim shops to have been burnt in the evening of 27/02/2002. This proves that the disturbances could be foreseen right from the previous evening but, for reasons best known to PW-274, Shri Mysorewala, he did not do necessary preparation and did not take hint from the incidents which took place on the previous night.

(2) PW-52 and many other PWs have specifically proved that all the incidents have started after arrival of A-37 and after she instigated the Hindu men in the unruly and violent mob with deadly weapon in their possession.

(3) PW-104, 165, 167, 149, 192, 191, 176, 255, 52, 136, 105

etc. prove the private firing in the morning.

(4) Through the suggestion, it is accepted by the defence that the hotel of A-2 is near hotel Natraj which used to be very close to the Muslim Chawls.

(5) A-41 was doing business in this very locality, it is also suggested by the defence that A-2, A-20, A-41 are workers of B.J.P. and were canvassers and propagators of A-37 in the election.

(6) Exh.177 is the panchnama of recovery of jewelery from unknown female. But, in fact, there is no claimant of these ornaments which shows that the relatives of the said deceased female might have migrated and are no more residing in the area. Many others like PW 52, 116 have testified to have migrated permanently due to the occurrences.

(7) Through many PWs, rape and outraging modesty of Muslim girls has been testified.

(8) Through PW-116 the fact that Naroda village is very close by to Tisra Kuva and maidan stands proved which falsify the defence put up by A-18, A-20 etc. whose name has also been shown in the complaint of Naroda village and who have submitted that since their presence has been shown at Naroda village through another complaint, the probability of their being at Naroda Patiya is ruled out.

In the humble opinion of this Court, Naroda village is very close by to this area, the time for the occurrence of Naroda

village is of noon and that the involvement of A-18 and of A-20 is not shown in the noon occurrence in this case and that looking to the distance which is not even of ½ a km between Patiya and Naroda Gam, the possibility and probability of the accused to go there and to come back at Naroda Patiya is very brilliant.

(9) Through PW-144, Fadeli, Muslim Chawls, S.R.P., Hall, etc. have been proved to be very near by.

(10) Through PW-162, the fact of women and children to have been cut and killed stands established.

(11) Through PW-115, the shops near Nurani to have been burnt at about 11:00 a.m. stands proved.

(12) Provoking slogan shouting also stands proved by all the witnesses.

(13) Through the testimony of PW-176, it stands proved that at the water tank area, at the khancha, Muslims could be cordoned by the Hindus as it is last point of Muslim chawls and beginning of Hindu societies.

(14) Through the suggestions given to PW-188 defence has accepted that A-44 is the leader of B.J.P. and V.H.P. and that his office situated at the site was utilized by the candidates of the B.J.P. in the election.

(15) PW-225 and other many PWs prove that at about 4:00 o'clock the wall of Jawan Nagar was broken by the men of mob

who were possessing deadly weapons, the men of the mob which was in fact the unlawful assembly then unduly entered the Muslim chawls did slaughtering, burnt the chawls and thrown Muslim alive in flames of fire, they have attacked the Muslims, as a result simple to grievous hurts were caused to many of the victims. Many were attempted to murder.

(16) Through the testimony of PW-234 and 239, it stands proved that a large tins filled in of kerosene were lying in the rationing shops and in the said shop known as Anjuman Grahak Bhandar was at Hussain Nagar which kerosene stock was used in the riot.

(17) PW-258 and another cart owner proves that liters of kerosene left after sale was used in an attack on Nurani as their carts were lying outside Nurani.

(18) Through PW-249, the tanker to have been burnt and used for the attack on Nurani on the date of occurrence stands proved.

(19) Police witnesses have specifically testified that on that day the disturbances were on their peak, there were communal riots, vardhies from hospital, death vardhies, vardhies for injuries were being sent from V.S. Hospital, Civil Hospital and were also given to the V.S. and Civil Hospitals for the injured persons who were injured in the communal riots.

(20) EXH.1580 and EXH.1579 were the two notifications, one of which is declaring curfew in the area which was very much needed as public tranquility was in danger.

(21) From inside, the wall of S.T. Workshop as stands proved through the testimonies of witnesses burning rags, stones, etc. were thrown on the Muslim chawls. This is found probable.

(22) Many prosecution witnesses have seen all the three occurrences, many victims have given printed complaints about their missing family members, the assault and attack with deadly weapons, about 121 complaints are on record, which all have been merged into 27 complaints, which shows the seriousness at the site on that day.

(23) PW-254 and others are witnesses of attack on Nurani, There are involvement of accused by name in numerous printed complaints some of which have been brought on record by the defence also.

(24) PW-223 is the witness bringing on record that about 20-25 gas cylinders from Uday Gas Agency were taken away by the mob and used in riot.

(25) The sum and substance of all the complaints is the men of the mobs were all with the deadly weapons, it were furious mobs, violent mobs, were possessing deadly weapons, inflammable substances etc. and were clearly out to destroy, ruin and damage Muslim properties, to do away Muslim victims etc.

(26) About 222 incidents related to ruining, damaging and destroying properties were done as has been proved. This proves the damages to have been caused on extremely large

scale.

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CHAPTER-III: DEALING WITH THE WRITTEN STATEMENTS OF THE ACCUSED AFTER F.S.

Applicable in General to all the accused :

(A) Further statement of all the accused were recorded by putting before them each aspect of every type of the evidence on record. The accused have chosen to reply mostly denying the evidence, calling it untrue and in some cases, pleading their ignorance for the contents of evidence adduced.

(B) None of the accused has chosen to lead defence evidence or to examine defence witnesses. Some of the accused have annexed documents and C.D. as evidence on record to render plausible explanation along with the written statement. Some of the accused have only given their written statements.

(C) This Court has perused all the written statements tendered by the accused alongwith respective documents as their plausible explanation and as their representation to prove their innocence.

(D) The common submission made by all the accused are that : there is no recovery or no discovery from the accused, the test identification parade has not been held, the accused is innocent, he has not committed any offence, he has been falsely involved in the crime, he has been falsely involved on account of political enmity, he was not arrested from the site of

the offence and that at the instance of police and N.G.O. the PW identifies him and the police has falsely involved the accused.

(E) While dealing with the commons submissions, this Court humbly but, firmly opines that the culpability of the accused has been proved beyond all reasonable doubts through oral, documentary and circumstantial evidence on record. There is no substance in the submission of any of the accused held guilty that the respective accused has been falsely involved in the crime and was in fact, innocent.

(E-1) As has been discussed since the previous investigation is not reliable, the submission on the recovery or discovery to have not been effected and the submission to the effect that the T.I.Parade was not held is not found impressive.

(E-2) It is settled position of law that the defect, lacuna and deliberate carelessness on the part of the investigating agency cannot fetch any benefit in favour of the accused or else it amounts to perpetuate the injustice already caused to the complainant party.

(E-3) The submission is found hollow on the aspect of their false involvement on account of political enmity as, it is nowhere submitted, which political enmity, whose political enmity, political enmity of which party and why political enmity. This submission is in no way found logical and acceptable one.

(E-4) In almost all the written submissions, the appreciation of the oral testimony of the witnesses have been

suggested by the defence and basing upon such suggested interpretation, it is submitted that the accused is entitled to the benefit of doubt. This appreciation by the defence has been found to be meritless. For appreciation of the oral version of each of the witness, the detailed discussion has been done by the Court at the relevant part of the Judgement. After having dealt with the common submissions, it is found that the common submission is not worthy of acceptance. The accused wise written statement is dealt herein below which over and above the above dealing.

(F) A-1 :

Except the general submission as above, no special submission has been made for and on behalf of A-1 hence no further dealing has been necessitated.

(G) A-2 :

(G-1) Over and above the general submission it has been specifically submitted by this accused that as admitted by PW-274, Shri K.K. Mysorewala, the First I.O., that the arrest of A-2 is based on the statement given by A-3. It is submitted that for this reason, the arrest is illegal.

(G-2) This Court is of the humble opinion that PW-274 seems to have obtained information from A-3 related to the crime committed by A-2. It seems that the source of information related to A-2 is the statement of A-3.

This Court humbly but firmly opines that since the

statement of A-3 has not been perused or relied upon by the Court and is not part of this record, the statement of A-3 has not been regarded as evidence, the known principle has been practiced that of prohibition to use the said statement as evidence. The judgment of conviction against A-2 is not recorded on that basic hence this submission does not focus any valid defence. Moreover, at the trial, the presence and participation of the accused has been proved beyond any reasonable doubt in all the three occurrence by 9 PWs hence this Court is not ready to accept that before arrest of A-2,no incriminating material was collected by the investigating agency.

(G-3) During the investigation, PW-274 might have used the information available to him from A-3 but, merely, with that the investigating agency seems to have not been satisfied itself. There is full-fledged investigation. The admission of PW 274 is one more point reveals the irresponsible conduct of PW 274 to go to an extent of rebutting the prosecution case.

(G-4) No doubt is left out in the mind of the Court about the culpability of A-2.

(G-4) For the initiation of investigation, at times, the information received from co-accused is the cause to treat the accused suspect, but then the investigator do search for independent support. Suffice it to say here that such statement has not been used by the Court nor it is held to be an evidence and that the conviction is not based on it.

(G-6) The steps taken by PW-274 pursuant to the

information received by him from A-3 is his investigation qua the crime committed by A-2. That statement appears to be merely a way to receive some information which has afforded him the reason to suspect the involvement of A-2 and that this situation is clarifying that there is no hurdle in the way of prosecution even if the initial information was based on the statement given by A-3. In any case, if this is true then also it is not the lacuna which can be held also it is not the lacuna which can be held fatal to the entire prosecution case wherein the accused is facing the charge of joint liability.

(G-7) Another point which is submitted is that, the Madressa which is described by the mother of Moiuddin (viz. PW 261), in whose murder A-2 is involved no window from where the occurrence and involvement of A-2 was witnessed. It is submitted that there was no such window. The existence of the window at that time is a word against word. For the appreciation of the evidence, the theory practiced by this Court is, unless satisfactory and special reason is carved out to doubt the credence of the witness, the victim witness or the relative of the deceased victim should not be disbelieved as it is not a fair practice in the framework of settled norms of appreciation of oral evidence of victims in such case.

(G-8) The trial has been conducted after about 8 years. There are panchnamas on record but, all those panchnamas have not been sincerely drawn by the police hence many details lacks in. Even panchnama of the religious place of Muslims viz. Nurani Masjid has not been drawn even though all the police eyewitnesses testify the damages to have been caused to Nurani. The point is for such lacuna can it be

believed that no damage was caused to Nurani. Even in V.C.D. also, Nurani was not shot. As far as the statements of witnesses are concerned, it is held that, that is not the reliable part of the record. As far as panchnamas, maps and other things are concerned, the proprietary of it is not doubted but, the point is the attempt is not sincere attempt and that such an attempt seems to have been difficult to adopt since there were continuance of curfew, law and order problems, riots for days together even after the occurrence.

Putting all this discussion together, this Court is of the humble opinion that the defence is not successful in raising any doubt against the version of PW-261 who is the mother of deceased son of 18 years of age, who was crippled and that she does not seem to be speaking lie and that this Court is of the opinion that she is quite a truthful witness. Hence, the written submission of A-2 has not found of any favour from the Court.

(G-9) The document, Exh.2420 has been produced by accused to submit that he was a member of peace committee from the year 2001 to 2006.

(G-10) Being a member of the Peace Committee of the police station, does not give any special title to the accused. This does not rebut the positive and credible prosecution evidence. The membership of Peace Committee does not prove any defence of the accused. This in fact shows that A-2 was a leading person of the area. A-44 has placed on record the information sought under Right to Information Act. It is replied by the police that the names suggested by the M.L.A., councilor are taken as member of Peace Committee. This

document in fact shows how intimate the accused was to the Kingpin of conspiracy A-37 as without recommendation of the M.L.A., the name of this accused would not have been selected as member of Peace Committee.

(G-11) In fact, inaction of the accused in restoring peace though was member of the Peace Committee is a telling circumstance against the accused.

(G-12) By giving suggestion to PW-104, the defence has accepted that the hotel of A-2 is near the Natraj hotel (which was very close to S.T. Workshop viz. Muslim Chawls). In fact, this acceptance is a pointer to the brilliant chance of prior acquaintance of the witnesses with A-2.

In light of what has been discussed above, this Court humbly opines that no substance is found in the written submission put forth on record by A-2 to prove his innocence and to give plausible explanation against his implication for commission of the charged offences.

(H) A-4 :-

(H-1) Over and above the usual submissions, A-4 has put up his case of alibi stating that since on that date the marriage of son Sawan of his younger brother was performed and that the accused had since attended the same, the accused was not present at the site. The accused has produced a C.D. of the marriage ceremony to prove his presence in the marriage.

(H-2) Alongwith the C.D. no certificate proving

genuineness of the recording and further proving that no tampering whatsoever was done in the C.D. is placed on record. In absence of the same, it is difficult to accept the genuineness of the C.D. which is directly in conflict with the reliable, natural oral evidence brought on record by the prosecution through its witnesses on oath who even have faced the ordeal of cross examination.

(H-3) Moreover, it is nowhere submitted that at what time, the marriage was, where the marriage was, and at what time the accused was present in the marriage. Be as it may be, but, the submission is not found to be truthful, secondly, the presence and participation of A-4 is not proved in the morning occurrence and even in the evening occurrence by the prosecution as it is not the prosecution case qua this accused.

(H-4) His presence and participation has only been proved in the noon occurrence. When the accused is tendering the plausible explanation to prove his absence at the site or to create doubt about the version of his presence at the site, he has to put it in a manner which apparently seems to be probable and the plausible explanation should be such which undoubtedly appeals the conscience of the Court as truthful and credible one. In the instance case, the accused has not brought such material on record when the role of ascribed to him is only as member of the unlawful assembly in the noon occurrence, the brilliant probability cannot be ruled out for him to have attended the marriage in the evening or morning on the day.

(H-5) Considering the fact that the presence and

participation has been brought on record and proved by prosecution beyond all reasonable doubt, by positive, clinching and credible evidence, the written submission is found to be not acceptable one.

(H-6) Lastly, it is to be noted that even in the Sting Operation, the co-accused have referred the participation of this accused which clearly corroborates that the PW involves this accused.

(I) A-5 :-

(I-1) A-5 has been involved in the offence by PW-149 in two occurrence. PW-149 is noticed to be a truthful witness, who is a local resident of the area, A-5 and others to whom the witness has identified are the local residents of the area and that, the PW has deposed in specific that she knows all the accused since belong to the same area. This version of the PW - 149 has been found to be very credible one.

(I-2) It has been submitted that PW-149 has identified the accused falsely as Tiniya Chhara.

Upon perusing the examination in chief, A-5 has been mentioned by the witness as son in law of Dalpat and the name of the person is stated to be as Tiniya Chhara but, the emphasis is apparently on the identity of the accused as son-in-law of Dalpat. This contention as a part of introduction of A-5 as son in law of Dalpat has not been challenged by the accused and that for want of even suggestion of denial, the said oral evidence of the witness very much remains on record as

unchallenged and that no doubt is created about the correct identity of the accused. Social identity should be accepted as perfect and doubtless identity. A-5 never said that he is not son-in-law of the deceased leading accused – Dalpat who was close aide of Bhavani.

(I-3) Moreover, on completion of examination-in-chief, this Court has dictated in the open Court a specific note that certain accused have been identified by the witness correctly. In this note A-5 has also been included. A-5 was present in the court and the L.A. for A-5 was also present. The note dictated by the Court as observation of the Court has not been challenged in any manner in the cross examination, or by way of tendering any application or even by way of oral submissions. This submission at this stage is an after thought and is a chance submission hence is not held to be true and honest.

(I-4) At paragraph 88 of testimony of PW 149, there is general suggestion about the identity of the accused but, the same has been denied by the witness. At paragraph 187, it gets locked and confirmed that A-5 is none else but son in law of deceased Dalpat who is according to the witness Tiniyo. In this paragraph, she also confirms her prior acquaintance with the accused.

Considering the above discussion, the submission made in the written statement about his false identity by PW 149 seems to be without any base and there is no substance whatsoever in the said submission. The accused has never objected his identity to have been correctly done by the

witness while the testimony of the witness or otherwise.

In light of the foregoing discussion, the written submission has not put up any valid defence or plausible explanation against the culpability of A-5.

(I-5) This Court has practiced the theory of being satisfied even if one reliable witness if involves the accused. In the case of A-5, PW-149 is found to be a reliable witness who involves A-5 in two occurrences satisfactorily on record whose culpability stands proved beyond all reasonable doubts.

(J) A-10 :-

(J-1) Over and above the usual submission, it has been submitted by this accused that certain fanatics have maliciously involved the accused on account of the fact that he is brother of deceased Guddu.

(J-2) This Court does not find any substance in this vague defence for which no base is created in the cross examination. The prosecution witnesses found reliable have effectively involved and implicated the accused in the charged offences and his culpability has been brought home beyond all reasonable doubt in all the offences committed in all the three occurrences. The written submission of this accused has not helped in creating any doubt against the prosecution case and even rendering plausible explanation to prove his defence.

(K) A-18 :

(K-1) Over and above the common submissions, A-18 also contends that, which is the first and foremost point to be noted from the written submission of A-18. He admits that he resides at Naroda and that he is a political leader of Naroda Patiya area.

(K-2) He has however submitted that since he is a political leader of Naroda Patiya, to spoil his political career he has been falsely involved.

(K-3) In light of credible and satisfactory evidence on record, this Court does not find this submission to be genuine for which no base is created even in the cross-examination of any of the PW.

(K-4) It is submitted that he has been arrested on account of personal bias of the I.O. against him.

If his extra judicial confession is perused, he has confessed that in fact, police is afraid of him, he used to even threaten the police, he has pretty good rapport with police and the moment he is noticed by the police, they realise that now it is all over.

(K-5) The written submission does not go with the hard reality which has been voluntarily confessed by the accused in his extra judicial confession.

(K-6) The submission on the incident of Kausarbanu need not to be separately dealt with over here, since the point of determination for the charge u/s.315 has the detailed

discussion on this incident. Suffice it to say here that, the dead body of Kausarbanu was not identified dead body. Moreover, in case of superficial injury, in case of the body being 100% burnt and in case of body being charred, the sign of injury may not remain on body, as the sign of injury would remain on body if the injury is on a deeper layer. When it is not clear on record as to, to what extent the injuries were sustained by Kausarbanu, it would not be proper to disbelieve the eyewitness of crime. The P.M. Report of Kausarbanu is the guesswork of PW 285 which is not believed to be genuine.

It has been discussed in detail about the probability of Kausarbanu to have been tired being a pregnant woman, having full term pregnancy and since had to wander for the whole day and therefore, the probability cannot be ruled out that even in case of superficial injury by sword on her stomach, she can fell down and become unconscious, the burns injury can cause her death. Considering this, the submission on the said aspect is not found to be acceptable one.

(K-7) It is submitted that PW-322 has created the sting operation on account of conspiracy and that the addition and omission has been done in that. This is found to be merely a vague allegation as, in light of the oral evidence of PW-322, the F.S.L.Officer, PW 323 and his opinion, the entire sting operation has been held to be genuine, in the voice of A-18 and remaining two accused and that there was no tampering found in that. Here by stating that addition and omission were done by PW 322, A-18 has agreed to have given the interview to PW 322 which is the exact case of prosecution. Considering the discussion, even this submission is not found impressive.

(K-8) The submission on the complaint to be ante dated and ante timed since has been dealt with at Part-2, repetition has been avoided.

(K-9) Exh.2434 is the identity card and certificate given by Sardarnagar Police Station to the accused certifying that he was a member of the Peace Committee in the year, 2001. In the opinion of this Court with such certificate no defence stands proved.

On the contrary, it becomes clear that the accused was a leading personality of the area and he was quite close to A-37 and the police officials and that he was known in the police staff members as well. (Reference Exh.2511 produced by A-44, which is not taken as evidence against A-18 but is perused as information given under Right to Information Act which throws the light to decide as to what is the source for A-18 to be member of the Peace Committee) Moreover, like A-2, this accused has also not played any role in restoring the peace on that day which is a circumstance against him.

(K-10) Exh.2435, F.I.R. of Naroda village C.R.No.I-98/02 has been produced but it does not prove any defence. This F.I.R. at Exh.2435 proves on record that the offence at Naroda village took place between 12:00 noon to 14:00 p.m. on that day. In fact, considering the evidence adduced in this case on record, it is clear that the presence of accused is very much probable at both the places.

The reason is, the involvement of A-18 is clearly

proved by the prosecution witnesses in the morning occurrence and then after in the evening occurrence. According to the classification of the occurrences done by this Court, the morning occurrences were upto 12:00 noon whereas, the evening occurrences were after 5:00 p.m. or so. This proves that no witness is in fact, testifying the presence and participation of A-18 between 12:00 noon to 5:00 p.m. This very vital aspect of the prosecution case in fact, proves how truthful the prosecution witnesses are who are implicating the accused in this case only in the morning and evening occurrence alone. The accused is rightly not found present by any of the witnesses during the noon hours. The time of the occurrence in that F.I.R. is shown to be 12:00 noon to 2:00 p.m. when the prosecution case in this trial does not claim his presence at Patiya, and that this document therefore, does not provide any defence since the site of Naroda Gam is close to the site of Patiya massacre and that the principle of probability enlighten one on possibility of A-18 to be at both the sites since time of presence is not in conflict. It is held that the document does not come to aid of A-18, more particularly, any probable defence or any plausible explanation in favour of the accused is not found to have been put forth.

(K-11) Vide EXH.2437, testimony of Shri K.K.Mysorewala has been brought on record of this case, which is in fact, the testimony recorded by the learned brother Judge in another Sessions Case viz. Sessions Case No.203/09 at Naroda Village. As has been discussed by this Court at Part-2 point No.61, it is clear that the testimony recorded by any other court is not relevant for this Court unless the necessary ingredient mentioned u/s.33 of the Indian Evidence Act stands proved.

The defence has not proved a single ingredient which is requisite for the relevancy of the testimony recorded by another Court to be read in evidence by this Court. In absence of that, the testimony of another Court is not at all relevant in this Court. Moreover, this Court has not been afforded an opportunity to record the demeanor of the witness while testifying about the complaint, this witness has even been examined by this Court as PW-274 but, the aspect about Naroda village case has not at all come on record through the defence version, which was, in any case, not relevant for this case and that the defence has not brought any other material on record by which the written submission becomes credible one.

(K-12) This Court is therefore, of the opinion that the written submission made by the accused is not at all worthy of credence and that, the probability does not establish the defence. Nothing comes in the way of culpability of A-18 who was one of the principal conspirators and leader and master mind of race murders and massacre at Patiya.

(L) A-20:

(L-1) Over and above the usual points in the written submission, the accused has also taken certain points as his defence and plausible explanation which have been dealt with herein under.

(L-2) The accused has submitted that since he was a member of Peace Committee and since, he was insisting (seems to be in the past) the police to provide more police

bandobast in his area, the police being displeased on him on this count has falsely involved the accused in the crime.

Such suggestions or submission is not placed through the cross-examination of the police witness as base of defence. It seems quite hollow. Moreover, the discussion at (K-9) herein above squarely applicable to this submission to hold that this shows intimacy of this accused with A-37, the kingpin.

(L-3) In the year 2001, the witness was a Director of the Gujarat Minorities Finance Development Corporation Ltd. and that since he has not helped the local persons belonging to the minority he has been falsely involved in the crime. This seems to be a very vague submission, without any base created in the oral evidence and without any probable evidence to believe such ground and in fact, as discussed, no case of false involvement has been made out through the cross examination on this ground or otherwise hence, it cannot be believed.

(L-4) In the complaint of Naroda Gaam / village viz. C.R. No.I-98/02 and in this complaint viz. 100/02, the sequence in which the names of the five accused have been shown remains the same.

It is submitted that the complaint filed in this case is merely copying the complaint of Naroda village. Merely similar sequence of names of the same accused cannot be held to be sufficient ground to discard the positive evidence on record against the accused. This submission therefore, cannot be believed.

(L-5) The time of the occurrence has been shown at Naroda village between 12:00 noon to 2:00 p.m. and that like A-18 even in case of this accused none of the prosecution witness has since implicated or involved the accused in the noon occurrence viz. presence and participation of this accused, between 12:00 noon or 5:00 p.m., suggested or testified by any of the prosecution witnesses, the conflict of time and place as suggested by the accused in fact, does not exist.

Rather the testimony of the prosecution witnesses is found to be in tune of the timings of complaint and that there is nothing to be doubted about the involvement of this accused in the crime.

(L-6) It is submitted that Shri K.K. Mysorewala, Shri V.K. Solanki, Shri M.T.Rana and other police officials are contradicting each other hence, they should not be believed.

As has been held under the topic of previous investigation discussed at length at Part-2 of the judgment and more particularly, general appreciation about the previous investigation, this Court has already held that and this Court has already adopted the policy and implemented the policy for appreciation of evidence in this case that 'no accused should be held to be implicated in the crime if only police witnesses are involving the accused.' The question therefore, does not arise of the appreciation of the police witness as desired by the accused for the reason that the accused is not implicated or involved in the crime solely on the testimony of the police officials.

The testimony of the prosecution witness have been given due importance and that no lawful rebuttal is either offered or no reasonable doubt is created against the testimony of the prosecution witnesses who are positively involving the accused in the crime.

(L-7) It is submitted that the sanction to prosecute cannot be termed to have been given validly. In the opinion of this Court, in the Chapter about the sanction at Part-3, it is held to have been given validly and lawfully. The said discussion need not be repeated.

(L-8) The accused has produced on record vide Exh.2445, 2446 and 2447 the I-Card, agenda of one meeting and the cover of the Gujarat Minority Finance Development Corporation Ltd. but the three documents do not prove any defence of the accused. It is rather from Exh.2447 which is a cover and on which the address of A-20 is written, it is becoming clear that the A-20 is a resident of Naroda Patiya which in fact helps the prosecution case of prior acquaintance of the witnesses with the accused.

(L-9) Vide Exh.2449, F.I.R. of the Naroda Gaam is on record. In the same way, vide Exh.2450 testimony in another Sessions Case of Mr. K.K.Mysorewala is on record which both documents were also submitted by A-18 and that the merits of both these documents have been discussed while discussing F.S. of A-18. When the said discussion is applicable to this accused also, the repetition thereof is avoided.

(L-10) It needs to be recorded that like this accused many of the accused have brought on record statement of one Natubhai on record, this is a statement before police, it is not exhibited, the deponent has not been examined by this Court as a witness and that the statement as desired by the defence cannot be referred being a statement before the police and that the said statement is not forming the record of this case and that it is not found just and proper and within the settled norms to refer such statement and to opine on the aspect.

Considering all the above discussion no substance whatsoever is noticed in the written submission and the annexed documents by this accused.

(M) A-21 :

(M-1) Over and above the common submissions, it has specifically been submitted by the accused that the leaders and politicians of the prosecuting party under collusion with PW-322 have hatched the conspiracy and have falsely done sting operation and have falsely involved the accused in the crime.

No base is found in the cross-examination to believe this defence as plausible explanation. The allegation is found vague and baseless. As has been discussed at length, under the heading of culpability of A-21 and under the heading of sting operation, this submission is not found meritorious and the said therefore, cannot be entertained.

(M-2) It has been specifically submitted that the accused is since falsely dragged in the litigation, he needs to be

compensated for his false involvement in the crime.

This Court firmly believes that there is absolutely no false involvement of A-21, he himself has confessed his crime. Secondly, there is nothing on record to believe that there is no material against the accused. In fact, substantial evidence of PW-322, the F.S.L. officer, PW-323 and other PWs have very much proved on record, which is also corroborated by the C.D. and D.V.D. of the sting operation and even the script of the sting operation is on record. The accused has given extra judicial confession which is believed by this Court to be genuine. Not only that, he has also involved the co-accused in the said confession. His personal knowledge about the entire crime and his role speaks for itself.

(M-3) The accused has not produced any documentary evidence to fortify his defence.

In light of the foregoing discussion, no substance whatsoever is found in the written submission tendered by the accused.

(N) A-22:

(N-1) The main submission of A-22 is that, since he has married to a Muslim girl and that too since it is a love marriage, the Muslim witnesses have falsely involved the accused on account of enmity against him.

(N-2) The fact of marriage of A-22 is within his special knowledge. He should put the proof on the record. There is no

documentary evidence or nothing on record by which it can be believed that A-22 has married to some Muslim girl. Even if it is accepted that he did marry to a Muslim girl, then in that case, many of the victim witnesses implicating this accused have pleaded their ignorance to the said fact and that there is no merit in the submission when, even in the extra judicial confession of A-22 himself confesses his crime, his tremendous hatred against Muslims is very much on record and that it cannot be believed that because of his so called marriage with a Muslim girl, the accused has been victimized.

(N-3) Moreover, it is worthy to be noted that A-21 is a co-accused who states, which corroborates the case already proved against A-22, is an explanation on record, saying that the woman who was staying with the A-22 on the date of the sting operation was brought by A-22 in tussle. A-21 has brought on record a startling fact saying that in fact, A-22 had affairs with the elder sister of the present woman in his house and then after, at the last moment he managed to run away with the younger sister. As it may be, it is personal affairs of A-22, this Court has nothing to with that. But, this has been discussed on record only to consider the submission of A-22 and that in light of the case proved and getting aid from extra judicial confession of A-21, this submission seems to be a fade off submission and that no light whatsoever comes from this submission. No defence is brought on record in favour of the accused.

No documentary evidence is produced by this accused on the record of this case.

(O) A-25 :

A-25 has made usual written submission with the common points already dealt with in the beginning of this topic.

(P) A-26 :

(P-1) The different submission of this accused is that since he has temple at his house and since he does worship and that the said worship was since disliked by the prosecution witnesses, he has been falsely roped into the crime.

This defence was suggested to some of the witnesses who have not only not admitted it, but have turned it down saying that how can they be concerned for the temple in the house of this accused and denied it in toto. Hence, the suggestion and the submission does not seem to be of any worth.

(P-2) The photographs of the temple in the house has been placed on the record but, the said photographs do not prove any defence in absence of any such admission by any of the PWs.

The written submission of this accused has not proved any defence or has rendered any plausible explanation against the involvement of the accused in the crime.

(Q) A-27 & A-28 :

The written submission of both these accused respectively

at Exh.2462 and 2463 are not containing anything except the common point dealt with in the beginning. No defence or explanation stands established by the accused through their written submissions.

(R) A-30 & A-33 :

Both these accused have also given usual written submissions with the common points as dealt with above. No defence is made out from these written submissions.

(S) A-34 & A-39 :

The written submissions of both these accused are having the similar common points which have already been dealt with in the beginning and that no documentary evidence has been produced on record by either of the accused to prove any part of the defence version. The usual defence has already been dealt with hence, repetition is avoided.

(T) A-37 :-

(T-1) Over and above and common submissions already dealt with by this Court, this accused has additionally submitted that the mobile phone call details is not worthy of credence and is doubtful record.

In the printed complaint, the witnesses have not named this accused and that the entire case is falsely foisted against her to spoil her political career and that it is because of political enmity, she has been roped falsely.

(T-2) The question of appreciating mobile phone call details has been dealt with at the relevant chapter at Part-3 of the Judgement, which therefore, need not be repeated. The point to be noted is it is not the case of this accused that she has no landline or mobile phone then.

(T-3) While appreciating the fact and circumstances of the case, this Court firmly believes that there is nothing on record to perceive that the accused has been falsely implicated in crime and that she is innocent.

(T-4) The prosecution has successfully proved its case against the accused and that her presence and participation has since been proved beyond reasonable doubt, the written submission is not found meritorious.

The point on the purpose of the PW to spoil her political career is without any base having been created in the cross.

(T-5) The other issue about her alibi on account of her engagement at Gujarat Legislative Assembly has been appropriately dealt with by this Court at the relevant Part-3 of the Judgement and that it has been held that the requisite of establishing defence of alibi has not been satisfied by the accused as she is required to discharge the burden as the defence of alibi has been raised by her based on her special knowledge. No doubt is created about her participation in the crime. Rather what clearly emerges on record is, she is kingpin and is one of the principal conspirators. This defence has

therefore, not appealed the conscience of the Court.

(T-6) To substantiate the written submission, documentary evidence has been placed on record. Vide Exh.2475, a certificate has been produced which was issued by the Secretary of Legislative Secretariat contending therein that on the date of the occurrence, A-37 was not Minister. Vide Exh. 2482, a C.D. of the proceedings of Legislative Assembly has been produced. These both are related to the defence of alibi, which as discussed has been dealt with hence, the repetition is avoided.

(T-7) Exh.2476 and Exh.2477 are the certificates related to the fact that no license for firearm has been issued in favour of the accused, but in the facts of the case, it is hardly material.

(T-8) At Exh.2478, F.I.R. of I-C.R.No.98/02 has been supplied by the accused, Exh.2479 and 2480 are the certified copy of the deposition which this Court has dealt with at Part-3 of the Judgement while discussing and appreciating the testimony of PW 310. For the ready reference, relevant part is reproduced herein below which is as under.

> *"(D-7) Along with Written Statement given after F.S., A-37 has produced Exh.2479 and Exh.2480 which both are deposition of two witnesses before the Court of Brother Judge who is trying riot case of Naroda Gam.*
>
> *The witness at Exh.2479 states that he saw A-37 at about 10:00 a.m. The witness whose deposition is at Exh.2480 is one Kantibhai Bhikhabhai Soni who has*

deposed that he saw A-37 somewhere in between 10:00 a.m. to 10:30 a.m. and since the mob has protested against her presence, she has gone from that place.

In the humble opinion of this Court, as it is so provided in Section 33 of the Indian Evidence Act, the testimony given in another Court and in another judicial proceeding can be relevant in any subsequent proceeding only if it satisfies the requisites of section 33 viz. if the said witness is dead, cannot be found or is incapable of giving evidence or is kept out by opposing party or his presence cannot be secured without delay or expenses etc.

In the case on hand, none of the circumstance has been submitted or proved to have been existed hence these testimonies before another Court cannot be looked into wherein the prosecutor of this Court has been deprived of his right of cross examining the witnesses.

Even the Court had no opportunity to know and note demeanour of the witnesses hence these testimonies cannot be accepted by the Court.

Even if the testimonies are perused to look into for plausible explanation of the A-37 then it is clear that none of the witness is sure about the time of arrival and departure of the A-37, but it is clear that her presence was objected to by the persons present there and had she not been escorted, she would have been attacked there. Therefore, it cannot be believed that she could have been

at the Sola Civil Hospital for long time because it is matter of common experience that the reaction of the mob would not come after the person to whom the mob was objecting remains there for one hour or so. If the mob is furious, the mob would not allow the person to remain there even for few minutes, hence the two different testimonies and the paragraph referred from the testimony of PW 327, to exhibit that she was at Sola Civil Hospital is not credible one. Even if entire submission of A-37 is accepted and when it is read along with the testimonies of the numerous PWs then also A-37 has not reached Sola Civil Hospital in any case before about 10:45 to 11:00 and that she was compelled to leave the Sola Hospital immediately and that she must have left maximum within 15 minutes. As put up by the defence, it seems that the climax of the anger of the mob is reflected when P.I. Mr.Lathiya had to arrange to escort A-37 to put her away from the mob and to save her to be victim of the furious mob.

This Court, considering all the circumstances on record and assuming the defence to be completely right, opines that A-37 might have reached Sola Hospital in between about 10:45 to 11:00 and has left in between 11:00 to 11:15. Hence no plausible explanation of the A-37 is found credible and probable."

(T-9) The C.D. provided by the accused shows that the accused was in the Legislative Assembly upto 08:40 a.m. of 28/02/2002. This Court is of the opinion that Gandhinagar and Ahmedabad are twin cities and that it is hardly at the distance

of 30 km. from Ahmedabad and therefore, if according to the accused, the accused was relieved at 08:40 a.m., it is not difficult for the accused to reach at Naroda Patiya site after 09:00 a.m. In the record of this case, the witnesses have stated that all the disturbances were started and in fact reached to its peak after arrival of A-37. As has been discussed at Part-7 where the issue of conspiracy has been summarised and discussed, at Part-3 where the issue of conspiracy has been discussed at length, it stands proved beyond all reasonable doubt that the accused was present and has participated in crime on that day, she was a Kingpin of Naroda Patiya massacre and she is one of the principal conspirators.

It cannot be forgotten that the result of the conspiracy is doing away about 96 Muslims and injury to about 125 Muslims.

As far as the complaint of Naroda Gam is concerned, like A-18 and A-20, no PW proves the presence of this accused at Patiya between 12:00 noon to 02:00 p.m. which is the time for commission of crime at the Naroda Village hence it is not improbable that the accused was present at both the sites. Considering the said vital aspect, this Court firmly opines that no plausible explanation has been supplied by the accused and that the case against the accused stands proved for commission of the charged offences beyond all reasonable doubt.

No substance is noticed in the written statement and the documents produced by this accused.

(U) A-38:

(U-1) The special submission is on the statement of face mark of the accused, the submission of the defects in the test identification parade, the fact of police having not covered the face of the accused, the submission of mobile phone and not examining all connected witnesses. All these are not found to be of any worth and that all these points have already been discussed at the relevant part of the Judgement while discussing PW-135 and other concerned witnesses and while deciding the worth of T.I.P. implicating A-38 on record hence, the same has been avoided to be opined again.

Suffice it to say that the objection raised during the cross examination of the Executive Magistrate on the ground that the police has complied with the direction of covering the face of the accused, was not raised before and while T.I.Parade was conducted, the accused could have raised hue and cry on that day had it been really an inaction of the police. The accused could have raised the similar objection before learned executive Magistrate which he did not do.

(U-2) Secondly, in the panhcnama itself, it has been mentioned that A-38 has refused to cover his face and that the effect and consequences of the same has already been discussed while discussing T.I.Parade related to A-38 in the Chapter of T.I.Parade as was discussed at Part-2 of the Judgment.

This Court has held that the T.I. Parade is a credible piece of evidence and that PW-135 has been found to be truthful, natural and reliable witness whose testimony is found to be such which can safely be acted upon and is sufficient to

bring home guilt of the accused of playing very vital role in murder of Hasanali Mohebeali Mirza.

(U-3) As far as the face identification mark of the accused are concerned, it in fact, does not have any bearing with the submission that the PW must have been informed about the identification mark of the accused before the T.I. Parade was held. Had it been so, the similar thing could have been repeated by PW-135 while she came to testify before this Court. But, as a matter fact PW-135 could not identify A-38 in the Court after lapse of so many years. This is very natural.

This proves that the identification marks even if were existing on the date of T.I. Parade, the same does not have any relevance or the same are not material to prove the defence of the accused or to disbelieve the prosecution case.

(V) A-40 :-

Over and above the usual submissions, this accused has also highlighted the dying declaration brought on the record.

In fact, the D.D. has already been dealt with at an appropriate part of the judgment which has therefore, not been repeated over here. The so-called D.D. have reduced to the level of police statement in the fact of the case. No reliance is placed on that. Suffice it to say here that the submission on the aspect of D.D. does not help the accused is proving his innocence.

(W) A-41 :

(W-1) Over and above the common submissions made by other accused, this accused has in specific submitted that the discovery of sword alleged to have been made at his instance, is not genuine and lawful and that since it was not blood stained, the said discovery does not connect the accused with the crime.

(W-2) While discussing the discovery panchnamas, in Part-4 where panchnamas have been discussed, it has been decided that this is the panchnama which can safely be acted upon hence, as far as that submission is concerned, this Court has already dealt with the same and therefore, the repetition to that extent is avoided.

(W-3) The accused has produced on record about 11 different documentary evidence mainly to prove his residence to be at A-15, A Ward, Kuber Nagar. The accused has produced, property card, election identity card, the certificate certifying him to have been member of peace committee, his position as the director of A.P.M.C., his rationing card, letter of L.I.C., light bill, his assessment statement, the letter written by A.P.M.C., the license issued by A.P.M.C. and the tax assessment statement, all from Exh.2488 to 2498.

(W-4) The Court has perused each document one by one. It seems that the accused is having three to four surnames as has been shown in the documents. His election I.D. shows his surname as Dingaria, as shown in Exh.2490 the identity card of the member of the Peace Committee of the Naroda Police Station for the year 2002 his surname is shown to be Kukrani,

if Exh. 2493 an inland letter is perused, his surname is Kukreja. It is true that in these documents the address of the accused is shown to be 15/A, Kubernagar but, with the very same address on Exh.2491 his address is shown as Ward Patiya, at Exh.2493 alongwith this address his address is shown to be opposite S.T. Workshop, Patiya. At Exh.2494 also his address is shown to be opposite S.T. Workshop.

(W-5) In nutshell, the record speaks for itself that the accused has about three surnames and that his address as even shown at Exh.2498 is opposite S.T. Workshop. That being the situation, in fact, these documents help the prosecution that the accused belong to the same locality and the possibility of prior acquaintance of the accused with PW is very brilliant and the witnesses seem to have been rightly identified by the witness.

(W-6) Even this accused being member of Peace Committee is proved close aide of A-37. He being the member of Peace Committee has not made any effort to restore peace on that day is self-speaking circumstance.

(W-7) It becomes clear that there is nothing in the written submission and the documents annexed to doubt the prosecution case or to receive any kind of plausible explanation for the accused or to prove the innocence of the accused.

In view of the foregoing discussion, it becomes clear that the accused has not created any reasonable doubt even through his written submissions and the documentary evidence produced by him.

(X) A-42 :

This is again a case of the submission with the similar common points which have been dealt with. No defence is carved out through the written submissions of this accused.

(Y) A-44 :-

(Y-1) Over and above the usual submissions, this accused has submitted that the accused himself is the victim of the crime and it is for the said reason to pressurise the accused from not initiating any action against the Muslims, false complaints have been foisted against him, that the discovery panchnama is absolutely bogus and is not having any base which therefore should not been relied upon.

(Y-2) To substantiate his claim, the accused has produced on record about 11 documentary evidence. Out of the said 11 documentary evidences, since two of the documents were illegible, this Court has ordered to produce the legible copy, but the accused has failed to provide any legible copy of the said documents. It seems from the list of the accused that the panchnama in I-C.R.No.110/02 and statement of Manager of the accused about the damages have been brought on the record vide the two illegible documents, but no fruitful purpose has been served for production of it as legible copy though sought has not been provided. These illegible papers are unable to put up any plausible explanation for the accused.

(Y-3) Upon careful perusal of the entire submission as far

as the submission on the appreciation of prosecution witnesses are concerned, it is to be noted that the Court has done appreciation of evidence at the relevant part of the Judgement where the PW have been discussed which need not to be repeated over here. No substance in this part of the submission is noticed.

(Y-4) At Exh.2506, F.I.R. of I-C.R.No.110/02 and charge-sheet of the same has been produced on record. This shows that one Muslim complainant, resident of the Muslim chawl behind Nurani Masjid, has filed the present complaint which is by name against A-41 and A-44. In this complaint, the complainant has clarified that two accused and other unknown persons have set the properties of Muslims and religious place of Muslims on fire and had thrown burning rags, stones, shouted slogans, committed the offence which would enhance hatred and enmity between two religion and have committed the offence mainly u/s. 395, 397, 435, 427, 436 etc.

(Y-5) If the appreciation of evidence in this case is carefully perused, it is getting clear that both these accused have been held guilty for the commission of offences including these offences.

(Y-6) The loss of crores of rupees is contended to have caused in the communal riot as even emerged from the statement of the witnesses, reflected in the charge-sheet at Exh.2506. In nutshell, these documents heavily corroborate the prosecution case against A-41 and A-44.

(Y-7) There is nothing on record to establish that the

accused or his manager has filed any complaint prior to 07/03/2002 which is the date of filing the complaint against the accused as can be perused from Exh.2506, the documents produced on record by the accused.

(Y-8) Exh.2507, is the order of Hon'ble High Court of Gujarat dated 14/12/2010 in the matter of Sp.C.A.No. 7678/2009 filed by the accused. It is true that the observation of accepting the accused to be riot victim has been made, but then the accused has invoked writ jurisdiction of Hon'ble High Court of Gujarat and that the writ petition seems to be for the direction to the government to provide him relief under the rehabilitation policy.

As against that this is a criminal trial against the accused. The standard of proof are absolutely different. No comparison can be done. As is clear on record, this accused was found present through out the day and about more than 30 different witnesses have implicated the accused.

The detailed appreciation of the testimonies of the witnesses have been done. There is nothing to put aside the testimony of several prosecution witnesses whose testimony is found by this Court to be natural and truthful.

In light of this discussion, the order of writ petition does not provide any defence against the culpability of A-44 proved by the prosecution beyond all reasonable doubt on the record.

(Y-9) The other documents are the Judgement and

Testimonies of another case and as discussed at Part-2, 3 and for the F.S. of the other accused unless the requisites u/s. 33 of Indian Evidence Act stand established, such testimonies cannot be held to be relevant in the present case.

(Y-10) Lastly, the invitation card of the marriage has been tendered which is on record at Exh.2512 with a line in the list that this marriage invitation card is of the marriage where the accused was present on that day. It is a matter of common experience that receipt of invitation card of marriage cannot be held to be evidence of attending the same marriage. Mere production of this invitation card does not prove any defence.

(Y-11) In light of the foregoing discussion, through this written submission and the accompanying documents, the accused has not provided any rebuttal to the prosecution case, has not created any doubt against the prosecution case and no defence is highlighted by this.

(Y-12) Vide Exh.2513, this accused has given pursis to declare the fact that he is not inclined to examine any defence witnesses. This pursis was given since in the F.S. the accused has stated about his desire to examine the witness to prove his defence, but somehow the other, ultimately, no defence version has been proved by examining any of the defence witnesses.

(Z) A-45, A-46, A-52, A-53 and A-55 :

(Z-1) All these accused have also filed their written submissions but all the submissions are based on the common points already dealt with by this Court in the beginning of this

topic, hence, no separate discussion is needed

(Z-2) None of the accused has produced any documentary evidence, hence, the said needs no discussion.

(Z-3) Like many of these accused many other accused have touched the topic of their belated involvement in the crime through statement in SIT after 6 years or so, but then, as the said point has already been dealt with at Part-2 of the Judgment as common point of submission, the said need not be repeated over here when even the previous investigation has not been found to be reliable.

(AA) A-47 :-

(AA-1) Over and above, the common submissions made by all the accused, which have been dealt with by this Court, this accused has made a special submission highlighting the affidavit of the I.O. filed in the bail application.

(AA-2) It is submitted that the person named Ramesh Chhara had already passed away and the name of the accused has been replaced by the I.O. by putting on record this accused and that this accused has been falsely involved whose vehicle was even requisitioned during the riot by the police and that this accused is absolutely innocent.

(AA-3) Since the PW 235 who involves the accused has identified the accused correctly, the controversy attempted to be created on record about the replacement of the accused for the name of the deceased Ramesh Chhara dissolves. This

submission, therefore does not seem to be correct.

(AA-4) The requisition of vehicle of the accused cannot prove his innocence. It rather proves his acquaintance with the police. This accused is apparently resident of the same area. This accused has been proved to be conspirator as well as member of unlawful assembly.

(AA-5) The reply given in the bail application filed by the accused has no defence within to be used after completion of the trial. It is based on prima-facie response of the I.O. whereas at present, the entire trial has been concluded, hence two uncomparable points cannot be attempted to be compared.

(AA-6) The death certificate of Ramesh Chhara at Exh.2522 makes no sense when the name of the father is different and even the witness has specifically identified the accused .Not only that, but during the cross, the witness also admires the personal quality of A-47 which confirms the identity to be true and correct.

(AA-7) The over all impact of the facts and circumstances of the case and the documents on record, it seems that the submission is without any substance. No defence whatsoever has been carved out or no plausible explanation has been tendered by this written submission.

(AB) A-58:

Except the usual submission the accused has not brought on record anything special as his submission except

the documents.

Vide Exh.2532, the certificate issued by the license department of Ahmedabad Municipal Corporation and vide Exh.2533 the certificate issued under the Bombay Shops and Establishment Act, are on record. A photograph of the shop of the accused has also been placed on record. All of which have been perused. This Court does not find any substance in the documentary evidence to read any defence of the accused. It needs a note that the license issued by the health department, has an address of the Naroda Patiya area, this proves the prosecution case of the accused to have his business place in the same area which is the site of the offence and that the probability of the prior acquaintance of the prosecution witnesses has been in fact, pointed out even in the written submission brought by the accused on the record.

(AC) A-62 :

(AC-1) The special point in the submission of this accused is that PW-236 and PW-157 are the two brothers who have falsely involved the accused in the crime.

(AC-2) The appreciation of the oral evidence of both the witnesses have been done and that the submission of the accused does not find the favour of the Court that the accused has been falsely involved in the crime. As a matter of fact, the accused is one of the conspirators and there is no reason to disbelieve the witness on whose testimony the prosecution case has been held to have been proved on record.

(AC-3) Though not taken as evidence, but as a mention, it needs a note that the accused has claimed that he was not P.A. of A-37. Even A-37 has stated that she did not have any P.A. Even if this submission is accepted as truth, the fact remains that A-62 is proved to have been close aide or man of confidence of A-37. As discussed at point (K-9) herein above (case of A-18) Exh.2511 produced by A-44 shows that this accused was also member of the Peace Committee of the Police Station and that reveals his connection with the Kingpin A-37. This false explanation speaks volumes.

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CHAPTER-IV: GRANT OF BENEFIT OF DOUBT

Upon critical analysis of the evidence on record inclusive of oral evidence, documentary evidence and circumstantial evidence, this Court is of considered view that the case against the below mentioned 29 accused cannot be held to have been proved beyond reasonable doubt. That being so, all the 29 accused are entitled to benefit of doubt.

Some of the accused mentioned herein below do face circumstance against them but this Court has practiced a policy of considering the circumstance only if the prosecution case stands proved beyond reasonable doubt against the accused through reliable PW. A-24, A-17 are such accused who have been identified by the PW during their substantial evidence as men of the mob, but then if the said has not been stated before SIT or the PW is found to be not reliable qua the

involvement of the accused or the identity by him in the Court becomes doubtful then the circumstance needs to be ignored in the larger interest of justice.

1. A-1 : Held Guilty.

2. A-2 : Held Guilty.

3. A-3 :

(1) None of the victim prosecution witness has involved this accused in the charged offences. His presence and participation is not on record except through the police witnesses. As has been decided under the chapter of previous investigation and more particularly, the finding under the heading of 'General Appreciation of the previous investigation', this Court has adopted the practice not to conclude on presence and participation of any of the accused if only police witnesses are involving the accused. It has been practiced that the test of proving presence and participation of the accused shall be the involvement of the accused by reliable prosecution witness, may be complainant, may be injured or may be relative of the deceased victim of the riot but the witness should be other than police.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

This accused is therefore granted benefit of doubt from all the charged offence since has only been involved by the police witness and by no other prosecution witness.

4. A-4 : Held Guilty.

5. A-5 : Held Guilty.

6. A-6 :

(1) PW 116 has implicated A-6 through his testimony but has not identified the accused.

(2) T.I.P. has not been carried out during the stage of investigation. Mistaken mention of the accused by the PW can not be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the PW on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

7. A-7 :

(1) PW 116 has implicated A-7 through his testimony but has not identified the accused.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken mention of the accused by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

8. A-8 :

(1) Not a single witness has proved presence and/or participation of the accused in the charged offences, which may be for the reason that the trial has been conducted after about 8 years and by that time, numerous witnesses had died, some were not found and some have migrated the State forever.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

9. A-9 :

(1) PW 116 has implicated A-9 through his testimony but has not identified the accused.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken mention of the accused by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

10. A-10 :- Held guilty.

11. A-11 :-

(1) PW 116 has implicated A-11 through his testimony but has not identified the accused.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken identity of the

accused by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) The identification by PW 178, the I.O. does not prove prosecution case against the accused.

(6) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

12. A-12 :

(1) Not a single witness has proved presence and/or participation of the accused in the charged offences, which may be for the reason that the trial has been conducted after about 8 years and by that time, numerous witnesses had died, some were not found and some have migrated the State forever.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

13. A-13 :

(1) Not a single witness has proved presence and/or participation of the accused in the charged offences, which may be for the reason that the trial has been conducted after about 8 years and by that time, numerous witnesses had died, some were not found and some have migrated the State forever.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

14. A-14 :

(1) Not a single witness has proved presence and/or participation of the accused in the charged offences, which may be for the reason that the trial has been conducted after about 8 years and by that time, numerous witnesses had died, some were not found and some have migrated the State forever.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

15. A-15 :

(1) Not a single witness has proved presence and/or participation of the accused in the charged offences, which may be for the reason that the trial has been conducted after about 8 years and by that time, numerous witnesses had died, some were not found and some have migrated the State forever.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

16. A-16 :

(1) PW 73 has implicated A-16 through his testimony but has not identified the accused in the Court.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken mention of the

accused by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) The identity by the I.O., PW 178 does not prove any part of the prosecution case.

(6) A-21 and A-22 have implicated this accused through their extra-judicial confession which are of co-accused and when the prosecution has miserably failed to establish its case against the accused, then the extra-judicial confession that too of co-accused cannot prove the prosecution case since this accused is non-maker of the confession.

(7) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

17. A-17 :

(1-a) PW 235, 243 and 179 have implicated A-17 through the incorrect identity where he has been falsely identified for the name of A-44. This Court has noted that there is resemblance in the appearance of A-17 and A-44 but in no case, the case against this accused can be held to have been proved, hence this identity does not prove prosecution case.

(1-b) PW 236 does involve the accused but the PW has not been

found reliable qua this accused.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken mention of the accused by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

18. A-18 : Held Guilty.

19. A-19 :

(1) None of the victim prosecution witness has involved this accused in the charged offences. His presence and participation is not on record except through the police witnesses. As has been decided under the chapter of previous investigation and more particularly, the finding under the heading of ‘General Appreciation of the previous investigation’, this Court has adopted the practice not to conclude on presence and participation of any of the accused if only police witnesses are involving the accused. It has been practiced that the test of proving presence and participation of the accused shall be the involvement of the accused by reliable prosecution witness, may be complainant, may be injured or may be

relative of the deceased victim of the riot but the witness should be other than police.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

This accused is therefore granted benefit of doubt from all the charged offence since has only been involved by the police witness and by no other prosecution witness.

20. A-20 : Held Guilty.

21. A-21 : Held Guilty.

22. A-22 : Held Guilty.

23. A-23 :

(1-a) PW 250 has implicated A-23 through his testimony but has not identified the accused before the Court.

(1-b) PW 307 is the I.O. whose identity does not prove the prosecution case.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken mention of the accused by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

24. A-24 :

(1) None of the victim prosecution witness has involved this accused in the charged offences. His presence and participation is not on record except through the police witnesses. As has been decided under the chapter of previous investigation and more particularly, the finding under the heading of ‘General Appreciation of the previous investigation’, this Court has adopted the practice not to conclude on presence and participation of any of the accused if only police witnesses are involving the accused. It has been practiced that the test of proving presence and participation of the accused shall be the involvement of the accused by reliable prosecution witness, may be complainant, may be injured or may be relative of the deceased victim of the riot but the witness should be other than police.

(2) PW 236 has involved this accused, but he has not been

found reliable qua this accused.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

25. A-25 : Held Guilty.

26. A-26 : Held Guilty.

27. A-27 : Held Guilty.

28. A-28 : Held Guilty.

29. A-29 :-

(1) Not a single witness has proved presence and/or participation of the accused in the charged offences, which may be for the reason that the trial has been conducted after about 8 years and by that time, numerous witnesses had died, some were not found and some have migrated the State forever.

(2) Identity by police PW 307 does not prove the prosecution case.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

30. A-30 : Held Guilty.

31. A-31 :

(1) The testimony of PW 212 is not found reliable qua this accused.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken mention of the accused by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

32. A-32:

(1) The testimony of PW 272 is found reliable qua this accused. As is clear from Exh.1810, the hospital record brought by the doctor PW, the accused was injured in the occurrence and was treated at the hospital. The possibility of the accused being onlooker cannot be ruled out.

(2) Identity by I.O. PW 327 does not prove the prosecution case.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

33. A-33 : Held guilty.

34. A-34 : Held Guilty.

35. A-35 :

The case against the A-35 has been ordered to be abated on account of his death during the trial.

36. A-36 :-

(1) PW-110 and 146 are in fact not implicating the accused in

the charged offences as held. Rather these PWs prove that at the instant of this accused, many Muslim lives could be saved on that day.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

37. A-37 : Held guilty.

38. A-38 :- Held guilty.

39. A-39 :- Held guilty.

40. A-40 :- Held guilty.

41. A-41 :- Held guilty.

42. A-42 :- Held guilty.

43. A-43 :

(1) None of the victim prosecution witness has involved this accused in the charged offences. His presence and participation is not on record except through the police

witnesses. As has been decided under the chapter of previous investigation and more particularly, the finding under the heading of 'General Appreciation of the previous investigation', this Court has adopted the practice not to conclude on presence and participation of any of the accused if only police witnesses are involving the accused. It has been practiced that the test of proving presence and participation of the accused shall be the involvement of the accused by reliable prosecution witness, may be complainant, may be injured or may be relative of the deceased victim of the riot but the witness should be other than police.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

44. A-44 : Held Guilty.

45. A-45 :- Held Guilty.

46. A-46 : Held Guilty.

47. A-47 :- Held Guilty.

48. A-48 :

(1) PW 203 has not been held reliable to implicate this accused in the charged offences.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken identity by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

49. A-49 :-

(1) Except PW-273 no other witness has stated anything related to the accused. Thus, it becomes a case wherein the presence of the accused on his duty point stands proved on the date of the occurrence, which is S.T. Workshop and which is close to the site of the offence. It can safely be held that such a presence can only create a suspicion about the participation of the accused but the same since cannot be termed to be a lawful evidence, the accused is required to be granted benefit of doubt.

(2) Identity by the I.O. PW 327 does not prove any part of the prosecution case.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

50. A-50 :

(1) PW-271 is the only witness examined against this accused. This witness was declared to be an hostile witness. The PW did not identify the accused, he has even not stated before the SIT, there is nothing to believe prior acquaintance with A-50.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

51. A-51 :

(1) PW 213 has been examined, but is not found reliable to implicate the accused in the charged offences.

(2) T.I.P. has not been carried out during the stage of investigation. The possibility of mistaken identity by the PW cannot be ruled out.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

52. A-52 : Held guilty.

53. A-53 : Held guilty.

54. A-54 :

(1) PW 156 has implicated A-54 through his testimony but has not identified the accused in the Court.

(2) Though A-54 was identified in TIP, but in the facts of the case, no purpose is served of that as discussed at Part-3, hence the accused cannot be held guilty on that alone.

Identity by PW 327, I.O. serves on purpose.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

55. A-55 : Held guilty.

56. A-56 :

(1) PW 137, 177 and 219 have been examined, but as discussed at the relevant part, they have not been found dependable to implicate this accused.

(2) The identity by PW 327, I.O. does not serve any purpose.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) PW-137, 177 and 219 have not satisfied the judicial soul for lawful implication of the accused in the crime which is apart from the fact that all the three witnesses were women and no male witness has reliably referred the presence of participation of the accused.

(6) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

57. A-57:

(1) PW 107 has implicated A-57 through his testimonies, but has not identified the accused before the Court.

(2) Except PW-273 no other witness has stated anything related to the accused. Thus, it becomes a case wherein the presence of the accused on his duty point stands proved on the date of the occurrence, which is S.T. Workshop and which is close to the site of the offence. It can safely be held that such a presence can only create a suspicion about the participation of the accused but the same since cannot be termed to be a lawful evidence, the accused is required to be granted benefit of doubt.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

58. A-58 :- Held guilty.

59. A-59 :-

(1) Except PW-273 no other witness has stated anything related to the accused. Thus, it becomes a case wherein the presence of the accused on his duty point stands proved on the

date of the occurrence, which is S.T. Workshop and which is close to the site of the offence. It can safely be held that such a presence can only create a suspicion about the participation of the accused but the same since cannot be termed to be a lawful evidence, the accused is required to be granted benefit of doubt.

(2) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(3) There is neither any recovery nor discovery being effected against the accused.

(4) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

60. A-60 : Held guilty.

61. A-61 :-

(1) PW 137, 177, 142 and 212 have been examined, but as discussed at the relevant part, they have not been found dependable to implicate this accused.

(2) The identity by PW 327, I.O. does not serve any purpose.

(3) There is neither any documentary evidence nor any circumstantial evidence against the accused on the record.

(4) There is neither any recovery nor discovery being effected against the accused.

(5) PW-137, 142, 177 and 212 have not satisfied the judicial soul for lawful implication of the accused in the crime which is apart from the fact that all the four witnesses were women and no male witness has reliably referred the presence of participation of the accused.

(6) That being so, the accused is entitled to be granted benefit of doubt which has been accordingly granted.

62. A-62 :- Held Guilty.

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CHAPTER-V: CULPABILITY OF THE ACCUSED

While coming to the conclusion on the guilt of the below mentioned 32 accused, this Court has borne in mind that :

(a) The guilt of an accused cannot be adjudged by the fact that vast number of prosecution witnesses believe him to be guilty. It is important that whether his guilt has been established by the lawful evidence brought on record or not. It is true that as far as certain accused like A-1, 22, 25, 26, 41, 44, etc. are concerned, vast number of prosecution witnesses have implicated these accused but, this Court has not considered that point alone in holding the accused guilty.

(b) Undeserving acquittals are dangerous for the existence of civilized society as, it shake confidence of the people in the

judicial system and it is also a challenge to the subsistence to the Rule of Law. It is therefore, improper to grant undeserving acquittal.

(c) It has been ensured that no wrongful conviction of any of the innocent accused is held by this Court.

(d) It is only after this Court is convinced that the dreadful, ghastly crime was committed by this 32 live accused in the company of many of the deceased, absconding, etc. accused. It is only then, the conclusion on the guilt of the accused has been held to have been brought home.

(e) As far as A-37 and other leaders of the communal riot are concerned, and as far as other leader accused who were admittedly the members of the Peace Committee of the Sardarnagar Police Station and Naroda Police Station are concerned, it is to be noted that they have not been found to have done any act of peace agent or pacifying agent.

A-37 has been proved to have telephoned the fire brigade for the fire which took place on a petrol pump at about 2:00 p.m. on that day as in the occurrence register of the fire brigade it has been so recorded. But it is very astonishing that the same A-37 has not been found to have made a single phone call for the occurrences of torching numerous Muslim chawls and houses where the Muslims were residing.

(f) None of the police officers present at the site were either requested or appealed by any of the members of the peace committee of the respective police station or by A-37 to see to

it that necessary actions be initiated and stern actions be taken for resumption of law and order situation in the area. This is a self speaking circumstance.

(g) The principle of 'no man is guilty until so proven' has been taken care of since there are large number of prosecution witnesses testifying before the Court implicating in all 32 accused beyond any reasonable doubt, this Court has taken utmost caution to see to it that no accused is falsely arraigned in the crime.

(h) The oral evidence, documentary evidence and circumstantial evidence have been found capable enough to join all hooks of the chain basing upon very credible, consistent, reliable and independent evidence.

(i) True it is, that the crime proved to have been committed by the accused was the most heinous crime but, the heinousness of the crime, cruelty of burning alive about 96 Muslims and injuring about more than 125 Muslims though certainly is hateful crime but, that alone has not weighed in the judicial mind in deciding the guilt of the 32 accused.

(j) The crime emanating due to communal frenzy was not a yardstick to measure the gravity of the offences. The appreciation of the deposition of the witnesses, since was found honest and true, that has been made a yardstick.

[1] COMMON FOR ALL THE LIVE ACCUSED HELD GUILTY:

[A] Even though, except A-26, the remaining accused are not

residing in the Muslim chawls their presence was noticed by the reliable PW at the Muslim Chawls and/or near the S.T. Workshop, some of them were also present near Nurani in the Morning.

[B] They all were proved to have remained present at the sites where the riotous activities were on going, that too, with the deadly weapon.

[C] Possessing a weapon at the time of occurrence, is itself a strong circumstance against the accused to be noted on record.

This circumstance, is a pointer to the mens rea the accused were having. It can safely be inferred that the accused were sharing all the common intentions and objects which the co-conspirators had and which the members of the unlawful assembly had.

[D] No explanation as justification of the presence of the accused is on record which is also suggestive of their full fledged involvement in the riot as there cannot be any other reason for the accused to remain present at the Muslim chawls, and outside S.T.Workshop or Nurani Masjid.

[E] The presence, possessing weapon and participating in the communal riot, and the conspiracy hatched since have been proved on record qua the accused who have been held guilty, it is proving the agreement of the accused with his co-conspirator to commit various offences or and it also proves involvement of the accused as member of unlawful assembly sharing the common objects, as discussed.

[F] While the accused were present and were participating in the crime, numerous offences, as narrated herein above, were committed against the human body, against the property, relating to religion etc. Except accused, victims and co-accused, none else was at the site of the offence. The accused who were identified by the victim and or about whom inference about prior acquaintance with the accused can be drawn, are the only accused who have been held guilty. Others have been granted benefit of doubt. This Court firmly believes that there is no material to believe that except the named, and / or identified accused, anyone else can be the author of the charge crimes. The accused have, therefore, been held guilty.

[G] The Court has appreciated the oral evidence in its details while perusing it with documentary evidence and understanding it with circumstantial evidence, the said appreciation is not required to be repeated. Suffice it to say that, the accused held guilty are undoubtedly not innocent and that it has been proved beyond all reasonable doubt that the accused did commit charged offences as conspirators and / or as members of unlawful assembly or as both.

[H] In view of the evidence of the eyewitnesses, victims, relatives of the accused victims, complainants, the guilt of the accused has been clearly brought home.

[I] Since the judicial conscience is thoroughly satisfied about the involvement of accused held guilty in the crime, it seems just and proper to hold that the guilt of the accused, as proved from the charge at EXH.65, is brought home beyond all

reasonable doubt.

In light of the above situation, only one irresistible conclusion and the inference can be drawn that the accused were the conspirators of the criminal conspiracy hatched and or were also members of unlawful assembly who have committed the crime. Their agreement with the other co-conspirator since stands proved, their conviction u/s.120-B as far as 27 conspirators are concerned is just and proper.

[J] Their membership of unlawful assembly by sharing the common objects, since, stands satisfactorily established by the prosecution beyond all reasonable doubts and that when it is clear that they did different offences throughout the day in morning, noon and evening occurrences or in at least one of the occurrence while executing the conspiracy hatched, their conviction for the offences committed by the unlawful assembly read with Sec.149 is also justified for the said occurrence.

[K] As discussed above, the written statement produced by all the accused (who are held guilty) after their F.S. does not disclose or highlight any defence of the accused. No rebuttal is offered to the prosecution case positively proved against the accused either through written statement or through the documents annexed by the accused.

The explanation given by the accused, held guilty, are regarded as false and inconsistent with their innocence.

[L] The act of the accused of coming to the site of the offence, itself shows their dedication and commitment to the

cause undertaken by the inter se agreement among the conspirators.

[M] The accused ought not to have come to the Muslim locality except that, the site is their ground for their activities to be performed in pursuance of the conspiracy or preparation made or the activities to be done as a member of the unlawful assembly by sharing common objects.

[N] No plausible explanation is on record for the conduct of the accused to leave their family, to come at the site of the offence, to come at fixed time at the site of the offence, to come with weapon at the site, to have joined in the slogan shouting and violent deeds of the unlawful assembly.

[O] The presence and participation of about 32 accused has been proved by unimpeachable, reliable and dependable evidence. All the 32 accused were found doing some of the overt acts like being with the deadly and lethal weapons, burning, robbing, looting Muslim dwelling houses, destroying, damaging, burning carts, wooden cabins, dwelling houses, religious place viz. Nurani, pouring kerosene and / or inflammable and burning property and religious place of Muslims, doing stone pelting, bottle throwing, torching vehicles, assaulting and attacking Muslims, using gas cylinder and private firing as means of doing the offences, provoking, instigating, acting in pursuance of the conspiracy, cordoning the Muslims by remaining in the Hindu mobs with weapons, outraging modesty of Muslim women, shouting different provoking slogans including 'kill, cut', burning alive Muslims, in fact, killing and cutting Muslims, cutting the limbs of their

body, throwing the small Muslim Children in the flames of fire, etc.

[P] It is true that in case of most of the accused neither recovery, nor discovery has been effected but, it is settled position of law that absence of that alone cannot be a ground for acquittal of the accused.

[Q] The presence and participation of the accused at the place of incident on the date of occurrence has all been proved beyond doubt.

[R] From the conduct of the accused and more particularly selecting Muslim chawls and Nurani masjid for commission of crimes clearly link the accused with the conspiracy hatched and sharing with the objects, the unlawful assembly had at that point of time. Hence, conspiracy as well as commission of offences by unlawful assembly is clearly established on record.

[S] The conduct, selection of modus of burning people and property, selection of the time, coming according to the decided time, committing offence as per design, shouting slogans are all connecting the accused with the motive.

[T] Accident of TATA 407 and murder of Ranjitsinh has not at all been proved to be causes for spontaneous reaction of the violent and unruly mob of Hindus. On the contrary, it undoubtedly reveals preplanning and preconsort.

[U] The strained relationship of the two communities is quite known. Hence, agreement to commit offences can safely be

inferred in pursuance of the conspiracy. The conspiracy in fact, intended to have been hatched to destroy, damage, ruin Muslim properties and to do away Muslims.

[V] It is known that hatching conspiracy is a continuing offence as long as the agreement to effect the unlawful objects continues which begins from the agreement arrived for the first time among the accused.

[W] Commission of all offences were clearly in furtherance of the common design the conspirators had and it was to fulfill the common objects, the members of unlawful assembly were sharing. It is for this reason the accused who have hatched criminal conspiracy shall be liable for punishment of all the offences read with Sec.120-B of the I.P.C. and the accused who have committed the offences while sharing the common objects shall be punishable for the offences read with Sec.149 of I.P.C. The accused who have committed both the offences shall be imposed punishment in alternative to each other.

[X] All the accused shall be punished for the occurrences where they were present and they have participated as far as their joint responsibility u/s.149 of I.P.C. is concerned.

As far as for commission of the offences to be read with u/s.120-B of the I.P.C. is concerned, the presence of the accused is not material, his hatching conspiracy is material, hence, all the 27 accused for all the offences committed during the entire day have been held guilty and shall therefore, be punished for the charged proved offence r/w. Sec.120-B of I.P.C. accordingly.

[Y] In light of what has been discussed herein above, this Court has no hesitation to hold the below mentioned 32 accused as guilty for the offences committed by them among the charged offences.

[Z] Provision of Sec.30 of the Indian Evidence Act would certainly be attracted. All the accused are tried jointly. There appears guarantee for truth in the extra judicial confessions of A-18, 21 and 22. As far as the three accused are concerned, the confession is clearly binding them. As far as the co-accused are concerned, for all the co-accused narrated by the three in their confession, there is sufficient evidence by itself to justify their conviction. This confession of the co-accused is read after marshalling evidence against these co-accused excluding the confession altogether from consideration. Since it is found independently capable to convict the co-accused, the confession of the three is called in aid only.

[A-1] Certain accused are facing circumstance against them as emerged on record but, the circumstance alone is not taken into consideration as a sole factor to hold them guilty. If after marshalling the evidence the accused is held guilty then, only the circumstance has been called in aid.

[A-2] Duplication is avoided in holding the accused guilty u/s.135(1) of B.P. Act.

[A-3] The accused in this case are held guilty invoking principle of joint liability. All the live conspirators viz. A-1, 2, 5, 10, 18, 20, 21, 22, 25, 26, 27, 33, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46,

47, 52, 55, 58 and 62 (27 accused) shall be punished for the offences committed, read with Sec.120-B of I.P.C. for their acting in pursuance to the conspiracy hatched, for their instigation to one another to the other accused and for their abetment. As emerges on record that role of A-18 is the highest, A-37 is the second highest as, being not member of the assembly. A-37 deserves some consideration being a woman. The role of A-1, A-2, A-10, A-22, A-25, A-26, A-41 and A-44 is different as leading persons. Role of the 22 remaining accused was merely as followers of principal conspirators and leaders hence, they all deserve different treatment in imposing punishment.

[A-4] There is no evidence that A-37 became member of the unlawful assembly hence, her culpability for the offence committed r/w. Sec.149 does not stand proved.

[A-5] The 26 conspirators have since executed the conspiracy by being members of unlawful assembly, sharing common objects, they shall also be held guilty for the offence committed r/w. Sec.149 of I.P.C.

To avoid duplication, the 26 conspirators shall not be punished in the operative part in both the sections viz. Sec.120-B and Sec.149 as, both invoke the principle of joint liability.

[A-6] No separate sentence shall be recorded for the culpability for the offences committed r/w. Sec.120-B and Sec.149 in view of the fact that it shall be recorded under one of the sections of I.P.C. by reading it with the offence committed. Thus, in the

facts of the case, the 26 conspirators have committed offences r/w. Sec.120-B and even offences r/w. Sec.149 of I.P.C.

[A-7] As has been proved beyond reasonable doubt : A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-37, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (27 accused) are all conspirators.

[A-7.1] A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (26 conspirators) and A-4, A-28, A-30, A-53 and A-60 (in all 31 accused) were members of the unlawful assembly.

[A-7.3] A-1, A-2, A-5, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-27, A-33, A-34, A-38, A-39, A-40, A-41, A-42, A-44, A-45, A-46, A-47, A-52, A-55, A-58 and A-62 (26 accused) were the members in unlawful assembly of the morning occurrence.

[A-7.4] A-1, A-2, A-4, A-5, A-10, A-21, A-22, A-25, A-26, A-28, A-30, A-41, A-44 and A-46 were the 14 members of unlawful assembly in the noon occurrence.

[A-7.5] A-1, A-2, A-10, A-18, A-20, A-21, A-22, A-25, A-26, A-28, A-30, A-40, A-41, A-44, A-52, A-53, A-55 and A-60 were the 18 members of unlawful assembly in the evening occurrence.

[A-7.6] In all 32 accused are found guilty, among them, 26 u/s.149 and Sec.120-B both, A-37 only for the offence read with u/s.120-B and five viz. A-4, A-28, A-30, A-53 and A-60 only

for the offences r/w. Sec.149 only.

What has all been stated herein below for each of the accused is to be read in addition to what has been opined for each of them at Chapter-3 of this Part while dealing with their F.S.

[2] A-1 :

The prosecution has examined about **17** witnesses who proved involvement of this accused. All of them have been found reliable, by even not treating the police witnesses reliable in absence of the victim PW to conclude the guilt of the accused.

The residence of this accused is admitted in Patiya area hence his identity is not an issue.

(2.1) This accused is the resident of Patiya area, he is the brother of deceased Guddu who has emerged as violent leader of the entire communal riot at Naroda Patiya.

(2.2) PW-73, PW-145, PW-149, PW-172, PW-182, PW-184, PW-192 and PW-202 prove the presence and participation of this accused in the morning occurrence.

(2.3) PW-156, 149 and 189 prove his presence and participation in the noon occurrence.

(2.4) PW-209 and PW-212 are the victim witnesses who have through their testimonies proved presence and

participation of this accused in the evening occurrence.

His presence and participation in communal riots, stands proved beyond all reasonable doubts including his role as leading accused.

(2.5) Over and above this, certain police PWs like PW-264, 265, 274 have also identified him to be the miscreant of the mob on the site on that day.

(2.6) Having marshalled sufficient evidence to bring home guilt of the accused, the confession of co-accused is perused. A-18, A-21 and A-22 vide their extra judicial confessions, corroborate to the fact of his active involvement in the riot.

(2.7) A-1 has also emerged on record as one of the conspirators and that he being the conspirator, in light of his proved abetment and his acting in pursuance of conspiracy, he has also been held responsible for all the acts and omissions committed by his abetment.

(2.8) The accused is also responsible for all the offences committed by the members of the unlawful assembly who were instigated and abetted through the conspiracy hatched.

(2.9) This accused has been proved to have been present and have participated in the three occurrences viz. right from about 09:30 a.m. till about atleast 07:00 p.m.

(2.10) A-1 is held guilty for commission of the offences u/s. 120-B and u/s. 143, 144, 148, 188, 295, 427, 435, 436, 440,

153, 153-A, 153-A(2), 323 to 326, 307, 302 all r/w. Sec.149 and all also r/w. Sec.120-B of I.P.C.

(2.11) He is entitled to benefit of doubt for charge u/s.145, 147, 186, 201, 295-A, 298, 315, 332, 376, 395 to 398 of I.P.C.

(2.12) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-1** is involved in **6** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime right from 2002 itself. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries was called upon by the prosecuting agency upon the insistence of the defence.

[3] A-2 :

The prosecution has examined about **9** witnesses who proved involvement of this accused. All of them have been found reliable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(3.1) This accused is having his hotel in Naroda Patiya Area at a very close-by place from the Muslim chawls. He has emerged on record as a very close aide of A-37 and as one of the leaders of the unlawful assembly in the communal riot.

(3.2) Through testimony of PW-104, 115, 143, 145, 149 and 184, the presence and participation of this accused stands proved in the morning occurrence.

(3.3) Vide PW-261 and PW-143, the presence and participation of this accused stands proved respectively in the noon occurrence and evening occurrence.

(3.4) Over and above, this a police witness has also identified this accused as one of the accused who was present in the mob and who was participating.

(3.5) PW-104 proves the involvement of this accused in private firing. This accused is one of the conspirators.

(3.6) PW-261 proves presence and participation of this accused in the murder of her son crippled Moiyuddin in the noon occurrence. This crippled Moiyuddin was 18 years old son of PW-261.

For the homicidal death vide Exh.1776/10, a complaint was lodged in 2002 itself but the complainant father had died in 2008. F.I.R. Exh.2363 is also on the record of the case. This complaint is to the effect that son Moiyuddin was burnt alive on that day by the accused.

(3.7) PW-143 has testified that this accused has threatened the witness to remove involvement viz. name of himself and A-37 from the statement given to the police. This conduct is to be noted which shows how A-2 takes the system as his joy ride.

(3.8) Since the occurrence of Aiyub stands proved by other many witnesses but vide PW-143 the presence and participation of this accused in the occurrence of Aiyub also stands proved.

(3.9) A-2 is held guilty for commission of offences u/s.120-B and u/s. 143, 144, 148, 188, 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 307, 302 all r/w. Sec.149 and all also r/w. Sec.120-B of the I.P.C.

(3.10) He is entitled to benefit of doubt for the charge u/s.145, 147, 186, 201, 295-A, 298, 315, 332, 376, 395 to 398 of the I.P.C.

(3.11) A-2 has also been proved to have possessed firearm by PW-104 and others.

(3.12) This accused has been proved to have been present

and have participated in the three occurrences viz. right from about 09:30 a.m. till about atleast 07:00 p.m.

(3.13) The hotel of A-2 was very close to the Muslim chawls viz. in the Patiya area hence his identity is not an issue.

(3.14) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-2** is involved in **1** complaint which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[4] A-4 :

The prosecution has examined about **5** witnesses who proved involvement of this accused. Two of them have been found dependable.

(4.1) This accused is a resident of KrIshnanagar near Naroda Patiya and that he is frequent visitor of the Naroda Patiya area who has been identified correctly by the witness. The presence and participation of this accused has been noticed in the noon occurrence by two reliable witnesses viz. PW-177 and PW-238. These two witnesses involve the accused in the noon occurrence beyond all reasonable doubts.

(4.2) Since from the other evidence, the guilt of the accused stands proved, corroboration is also noted to have been available from extra judicial confessions of A-18, A-21 and A-22 where they also involve this co-accused.

[5] A-5 :

The prosecution has examined about **2** witnesses who proved involvement of this accused. One of them has been found dependable, who involves the accused in the morning as well as noon occurrences.

(5.1) This witness is residing in the adjoining society viz. Gangotri society which is at the end of the Muslim chawls. This accused is known to the witnesses. This accused is implicated in the crime by reliable PW-149 in the morning occurrence. This accused is also one of the conspirators.

(5.2) PW-149 also involves the accused in the noon occurrence. He has been found fully involved, present and participating in all the morning as well as noon occurrence. This accused has also been held as conspirator. He is popular as son-in-law of the deceased leader Dalpat, a close aide of Bhavani.

[6] A-10:

(6.1) The prosecution has examined about **13** witnesses who proved involvement of this accused. Nine of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(6.2) This accused is also the brother of deceased violent leader Guddu and is residing at Mahajania Chhara Vaas at Naroda Patiya itself. This accused has been involved by PW-145, 170, 182 and 184 in the morning occurrence.

(6.3) PW-156, 175 and 189 involve him in the noon occurrence.

(6.4) PW-209 and 212 involve him in the evening occurrence.

(6.5) Even the police witness identifies this accused. This accused is one of the conspirators and one of the leading persons of the occurrences which took place on that day.

This accused is one such accused whose presence and participation has been proved through out the day in all the three occurrences as member of the unlawful assembly.

(6.6) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-10** is involved in **5** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C-Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[7] A-18 :

The prosecution has examined about **14** witnesses who proved involvement of this accused. Eleven of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(7.1) A-18 himself confesses his house to be close-by to the area, he also confesses that he is a political leader of Naroda Patiya area and that he is well known there.

(7.2) PW-149 and 198 implicate this accused in the morning occurrence.

(7.3) PW-198 and 228 implicate him in the evening occurrence.

(7.4) This accused has not been noticed in the noon7 occurrence.

(7.5) PW 320, 322, 323 and 314 involves him in the extra-judicial confession.

(7.6) PW 262, 266, 274 and 277 are the police PW involves the accused in the crime.

(7.8) About 4 police witnesses identify this accused. His involvement in the murder of Kausharbanu and other incidents of morning and noon occurrence stands proved.

(7.9) In the sting operation shot by PW-322, he confesses his commission of the crime which sting operation was held to be genuine, proper and lawful.

(7.10) This accused gives the name of his co-accused in his extra judicial confession as having implicated in the crime.

(7.11) The accused was present at the site in the morning occurrence as stated and is one of the principal conspirators. It is he who, when saw corpses while he visited at Godhra, gave challenge to rise the death toll at Godhra for four times more.

(7.12) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-18** is involved in **1** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C-Summary, have been called into aid. It is fitting to note that the R & P of 'C'

Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

(7.13) As presented by him he is also arraigned as accused in another complaint of Naroda Gam.

[8] A-20 :

The prosecution has examined about **12** witnesses who proved involvement of this accused. Ten of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(8.1) A-20 has emerged as a close aide and also as a canvasser and propagator of A-37 in the elections. This accused has been proved to be a conspirator as well as a member of unlawful assembly which committed the offences.

(8.2) PW-73, 104, 149, 184 and 204 implicate this accused in the morning occurrence whereas, PW-73 also implicates this accused in the noon occurrence.

(8.3) Over and above this, numerous police witnesses have also identified this accused.

(8.4) PW-73, 184 and 204 etc. testify the involvement of this accused in the private firing.

(8.5) This accused is implicated in the crime in the extra-judicial confession of A-21 and A-22. This accused is residing very close-by viz. hardly 200 mtrs. from the S.T. Workshop in

the same area who was also a leader of the unlawful assembly on that day.

(8.6) PW 236 has identified this accused which is a pointer circumstance to his presence at the site.

(8.7) Against this, another complaint of Naroda Gam has also been filed.

[9] A-21 :

(a) The prosecution has examined about **3** witnesses who proved involvement of this accused. PW-320, 322 and 323 have been found dependable.

(b) Many inquest panchanams of the dead body show loss of hands, legs etc. PW 205 has sustained muscle deep injury on her hand which all corroborates the confession of A-21.

(c) Sec.30 of the Indian Evidence Act is held to have been in operation in this case as, its ingredients stand satisfied. The base of Sec.30 is, when an accused makes a confession implicating himself that may suggest that, the maker of the confession is speaking the truth. It is not likely that the maker of the confessional statement would implicate himself untruly. This is not a weak type of evidence against the maker himself. A-21 is himself maker of the confession hence, the Court needs to consider the same in the larger interest of justice.

(9.1) A-21 is a resident of the area of Naroda Patiya, who has been involved in the crime by PW-320, the C.B.I. officer,

PW-322 Shri Khetan who has shot the extra judicial confession, PW-323, the F.S.L. Scientist and PW-314 who has recorded the voice sample of A-21. The panchnama of collecting the C.D. of voice sample corroborates the case against the accused.

(9.2) The extra judicial confession is totally binding to the accused and is alone sufficient to hold the accused guilty since he himself is the maker of the confession.

(9.3) The facts and circumstances of the case eloquently prove the involvement of the accused in the crime as a conspirator.

(9.4) A-21 has been in the shooting of extra judicial confession alone, for some interview and even in company of A-22 for some other interview. From his interview viz. from his confession, his attachment with A-18 and A-22 is very clearly revealed.

(9.5) The presence and participation of A-21 has also been inferred by this Court which is found to be quite trustworthy, basing upon the proved, voluntary, free and lawfully acceptable extra judicial confession of the A-21. As has been discussed in the chapter of Sting Operation, revelation of A-21 is to the effect that though many gas cylinders were bursted, the mosque was not much shaken. The fact has been undoubtedly proved that the attack or the assault on Nurani was only once on 28/02/2002 and that was at morning after A-37 came at the site. The revelation and the expression of A-21 in the sting shows that he does not give hearsay account, but he speaks from his personal knowledge which shows that he was himself

present at the site of Nurani and nearby in the morning. It is therefore, clear that over and above the accused mentioned and identified, A-21 was also present at the site right from the morning itself. A-21 is inferred to be one of the conspirators basing upon relevant substantial oral evidence like of PW-322 and circumstantial evidence. The aid then is called upon from sting operation. Moreover, his confession is, 'he cuts off hands and legs of the victims who were escaping from the Muslim Chawls'. A-21 confessed that he was outside the Muslim Chawls and has cut off legs and hands of Muslims. This goes with his agreement to do illegal acts with the remaining co-conspirators who were inside the Muslim Chawls. This combination of commission of the offences viz. overt acts inside the Muslim Chawls and outside the Muslim Chawls, leads to only one inescapable conclusion that, A-21 is one of the conspirators and was working as per common design in pursuance of the pre-concert and the conspiracy hatched with his co-accused. Even his knowledge about the plight of the victim, inside the Muslim Chawls without going inside, the chawls and his counter role outside the chawls are also undoubtedly proving the criminal conspiracy having been hatched where A-21 was also a conspirator. His presence at the site stands proved by his extra judicial confession where he confesses his overt act. There is no reason to doubt the extra judicial confession.

(9.6) The offences of attacking in the Muslim Chawls causing damages and subjecting the Muslims with physical violence and criminal force went on for the entire day. This took place throughout the day in all the three occurrences and when A-21 is inferred to be one of the conspirator, his

abetment, overt act in pursuance of conspiracy stands proved. It is needless to express that the prosecution could not examine any eyewitness qua the role of A-21 but that does not diminished the importance of the PW like PW-322, F.S.L. Scientist, official of All India Radio and even extra judicial confession of A-21 himself. It is scientifically proved to have been recorded in his voice without any tampering. The reliance on the extra judicial confession qua the accused himself and qua the co-accused he involves are on different footing. No doubt is created about truthfulness, genuineness and voluntariness of the Sting Operation. It can safely be acted upon when not a single defence is raised or put up against the sting and it is almost unchallenged as far as A-21 is concerned.

(9.7) Extra judicial confession in this case possesses a high probative value as it emanates from the person who commits a crime and that as discussed at the Chapter of Sting Operation, it is free from every doubt. PW-322 before whom the confession was given by A-18, 21 and 22 is an independent and disinterested witness who bore no eminence against any of the accused. This extra judicial confession, in case of all the three accused is relevant and admissible in law under Sec.24 of the Indian Evidence Act. Law does not require that the evidence of an extra judicial confession should in all cases be corroborated. In the instant case, PW-322 is not a person in Governmental authority or in any manner an authority. There is no ambiguity in the version given. As emerges on record, more particularly from the oral evidence of PW-322 he has developed cordial relationship with the accused. Not only that, but he has also established link with the accused creating the base of institutional organization and he has projected himself to be a

dedicated worker of Hindu Organization. The Hindutva in the three accused has been linked by PW-322 with his identity which he has assumed for the purpose of recording the sting operation. It is this identity and cordial relationship has created tremendous high level of faith and confidence in the mind of the accused where they felt that PW-322 is their own person and their interest is same. The extra judicial confession of all the three accused does not lack plausibility and inspires confidence of the Court. This Court is therefore, of the opinion that, though extra judicial confession in the very nature of things a weak piece of evidence, but, in the instant case, in a very peculiar facts and circumstances, this extra judicial confession needs absolutely no corroboration. It stands proved with the substantial evidence of PW-322, the C.D., V.C.D. and the oral evidence of F.S.L. scientist, etc. Hence, this extra judicial confession considering the foregoing discussion on its own merits is found very dependable, reliable, having the contents full of probability and that it is absolutely found safe to convict the accused on this extra judicial confession.

(9.8) Hence, he is liable for all the offences committed during the entire day while reading it with Sec.120-B. His overt acts clearly proves that having hatched the conspiracy, he then became member of unlawful assembly right in the morning itself when attack on Nurani and Muslim chawls were started knowing it to be unlawful to execute the conspiracy. Presence of A-21 in the morning occurrence stands proved. He shared at that time the common objects of unlawful assembly. The attacks and assaults were in the Muslim chawls right from 10:00 a.m. to evening about 6:00 p.m. The knowledge of attack on Nurani proves his presence in the morning and his

participation in the attack at Muslim Chawls proves his presence in the noon and evening, His revelation shows his admiration for patronage of A-18 and acceptance of heroism of A-22. All his acts need to be accordingly read and held in the line of principal offender, he is liable for offences committed to be read with Sec.120-B of the I.P.C. He shall also be held liable for the offences committed, for the crimes committed while he was present as member of unlawful assembly to read it with S-149.

(9.9) In light of the foregoing discussion, it stands proved beyond all reasonable that A-21 is involved in all the crimes and that he is the author of the crimes committed on the entire day who has committed several offences.

(9.10) A-21 has been inferred to have abetted the crime as a conspirator for all the three occurrences and his presence and participation in the three occurrences is not doubted rather, it stands proved beyond all reasonable doubts.

He is therefore, held guilty.

[10] A-22:

The prosecution has examined about **59** witnesses who proved involvement of this accused. Forty Six of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(10.1) PW-56, 109, 112, 142, 144, 145, 147, 149, 157, 167,

170, 171, 180, 184, 185, 188, 189, 192, 198, 199, 202, 213, 238 and 239 are the 24 different witnesses who have implicated this accused in the crime. Thus, the presence and participation of A-22 in the morning occurrence stands proved beyond all reasonable doubts.

(10.2) PW-175, 181, 224, 226, 229, 231, 238, 242, 257, 260, 261, 227 and 142 implicate this accused in the noon occurrences.

(10.3) PW-37, 72, 112, 114, 142, 156, 162, 174, 185, 198, 209, 212, 228 and 230 are implicating this accused in the evening occurrence.

(10.4) This accused has been found involved in several murders and other offences. He is also involved in the attack on Nurani Masjid as emerges from his extra judicial confession.

(10.5) PW-133 is the discovery panch who also identifies the accused from whose possession a sword was discovered.

(10.6) This accused seems to have actively participated in the murders of family members of PW-72, cousin of PW-228, brother of PW-226, mother of PW-212, mother of PW-209, murder of Rukhsana, Shamshad, Moiyuddin, Sharif, Siddique, etc. and say for short occurrences throughout the day as he was present and has participated in all the three occurences.

(10.7) This accused is also found involved in the rape of one Nasimobanu.

(10.8) This accused is one of the leading conspirators and even a member of unlawful assembly.

(10.9) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-22** is involved in **17** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[11] A-25 :

The prosecution has examined about **17** witnesses who

proved involvement of this accused. Fourteen of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(11.1) This accused was residing in a Muslim Chawl and then after, went to reside in the adjoining Hindu society. He was working as a conductor in the A.M.T.S. and was known to the people of the locality.

(11.2) PW-94, 112, 185 and 199 are implicating this accused in the morning occurrence.

(11.3) PW-73, 173, 187 and 188 implicate him in the noon occurrence.

(11.4) PW-106, 112, 176, 188, 198 and 217 implicate this accused in the evening occurrence.

(11.5) Over and above this, the police witnesses also identify this accused.

(11.6) This accused is one of the conspirators of the crime and was also member of unlawful assembly throughout the day.

(11.7) His involvement in different occurrences stands proved beyond all reasonable doubt.

(11.8) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are

different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-25** is involved in **2** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[12] A-26 :

The prosecution has examined about **24** witnesses who proved involvement of this accused. Twenty One of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(12.1) As emerges on record, during the cross examination,

this accused was residing in the Muslim chawls viz. of the locality.

(12.2) PW-83, 109, 112, 138, 142, 150, 183, 184, 238, 136, 149 and 236 are the witnesses who implicate the accused in the morning occurrence.

(12.3) PW-138, 177, 229, 238, 261 and 142 implicate him in the noon occurrence.

(12.4) PW-72, 106, 112, 203 and 198 implicate him in the evening occurrence.

(12.5) PW-142 proves the accused to be an attacker on the Muslim chawls alongwith weapons in the noon hours, his participation in the murder of crippled Moiyuddin stands proved, his participation in the murder of family members of PW-72, 106 and family members of PW-203 stands proved. To be short, his involvement was in all the offences committed through out the day.

(12.6) He is one of the conspirators of the entire crime and was also member of unlawful assembly.

(12.7) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been

involved in different complaints for how many times. As per that conclusion, the name of **A-26** is involved in **7** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[13] A-27 :

The prosecution has examined about **6** witnesses who proved involvement of this accused. All of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(13.1) PW-144 and 145 implicate this accused in the morning occurrence. They both are reliable witnesses. A-27 has been identified correctly and he is a known person in the locality who is also residing in the Naroda Patiya area. He has also been identified by the police witnesses.

(13.2) He is one of the conspirators as well as a member of unlawful assembly.

[14] A-28 :

The prosecution has examined about **8** witnesses who proved involvement of this accused. Seven of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(14.1) This accused does sweeping work in the Muslim chawls and used to come to take the left over food from the Muslim chawls as an admitted position, he is known in the entire area and he was residing in the same area. At the time of occurrence his house of nearby the Hindu society. This accused is seen with a weapon, is involved in the murder of family members of PW-106, murder of family members of PW-72, he has been seen with the hockey and he has participated in injuring one of the victims. In short, he was involved as a member of unlawful assembly in the noon and evening occurrence.

(14.2) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per

that conclusion, the name of **A-28** is involved in **1** complaint which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[15] A-30 :

The prosecution has examined about **4** witnesses who proved involvement of this accused. Two of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(15.1) This accused resides in the adjoining Hindu society very close-by to the Muslim chawls. The presence and participation of this accused is proved by PW-201 and 158 respectively in the noon and evening occurrences. He has been seen with a sword, both the witnesses were found reliable and truthful. The identity of the accused is not an issue as he

resides in the same area.

[16] A-33 :

The prosecution has examined about **4** witnesses who proved involvement of this accused. Two of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(16.1) This witness has in fact, been involved by reliable PW-200 and 213 in the charged offences. He has been seen with a sword. He has also been identified in the test identification parade, he is implicated in the crime by two reliable witnesses viz. PW-200 and PW-213. He is one of the conspirators. He was also a member of unlawful assembly. Yadi, Exh.239, TIP panchnama, Exh.240, oral testimony of PW 35 also involve the accused in the crime.

(16.2) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-33** is involved in **2** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at

all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C-Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[17] A-34 :

The prosecution has examined about **1** witness who proved involvement of this accused. This witness has been found dependable.

(17.1) This accused is implicated in crime by one reliable witness viz. PW-167. This accused is conspirator as well as abettor of the crime.

[18] A-37 :

The prosecution has examined about **12** witnesses who have proved involvement of this accused at the site. The common and consistent finding of testimonies of all the referred PW is of active instigation and abetment by the accused to the co-accused to act in pursuance of the conspiracy. All of them have been found dependable, by even

not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(18.1) This accused was the then, current M.L.A. of the Naroda constituency. She is one of the kingpin of the entire communal riot. She is one of the principal conspirators.

(18.2) Through PW-104, 136, 176, 149, 192, 198, 236, 156, 227, 52 and 143, presence and participation of this accused is proved on record beyond all reasonable doubts. She has played a role of instigating the Hindu mobs and thereby abetting the commission of offences by the co-conspirators. She has abetted formation of unlawful assembly to execute the conspiracy.

(18.3) Her presence, instigation and abetment are also corroborated through extrajudicial confessions of the co-accused viz. A-18, A-21 and A-22. This evidence is not considered as the main evidence, but, merely a corroborative piece of evidence as A-37 is herself not the maker of confession. This has corroborated since so many reliable prosecution witnesses prove clear implication and involvement of this accused in the crime.

(18.4) PW-104, 136, 143, 52, 192, 236, etc. have very very clearly proved on record as to how A-37 has instigated the mob, how she has abetted to form the unlawful assembly, how upon her arrival the co-conspirators were instigated and how their confidence was boosted up to commit the charged offences, her involvement as a principal conspirator has also been proved on the record. PW-143 was threatened by a co-accused to remove the name of this accused.

(18.5) What has emerged on record is that, on that day A-37 came to the site twice in the morning. PW-236 has also stated about the instigating speech she had delivered at the site, her abetment to all the offences committed on that day clearly stands proved.

(18.6) She was seen near the Jawannagar Khada before 12:00 noon, her hospital is found to be very close-by to the site of the offence.

(18.7) At about 2:00 p.m. she had telephoned to the fire brigade for fire call of some petrol pump in the Naroda Patiya area, she has taken round at the site of the offence as emerged from the confession of the co-accused, A-18, A-21 and A-22, the plea of alibi as her defence is not proved by her, no burden whatsoever has been discharged by her.

(18.8) The C.D. of Legislative Assembly does not help the accused to prove her defence of alibi. All the documents produced by the accused have been dealt with at Chapter-III of Part-7 of the Judgement.

(18.9) No doubt is left out in the mind of the Court about the communication amongst the accused before they met on the date of the offence which is a vital link of conspiracy.

[19] A-38 :

The prosecution has examined about **7** witnesses who proved involvement of this accused. Four of them have been

found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(19.1) This accused has been implicated by PW-73 and PW-135. PW-135 has been found as most reliable witness as in the test identification parade, this accused was identified by PW-135. This accused is proved to have been involved in the murder of Hassanali Mirza, brother of PW-135 in the morning occurrence.

This accused is also a conspirator and a member of unlawful assembly who proves on record that the conspirators have executed the conspiracy as a member of the unlawful assembly.

(19.2) From the R & P of C-Summary, the complaint at Exh.1776/23 is on record which is of PW-135. This has proved the incident to have occurred in the morning at about 10:00 a.m. at Hussain Nagar, near the resident of the complainant PW 135. The complaint, FIR etc. of PW 135 is on the record of this case also. The letter written by the PW 245 Shri Nadim Saiyad, visiting card of PW 245, call details of the mobile etc. the material collected by the investigating agency and the role played by PW 237, 253, 270, 277 etc. very clearly stands proved. All these prove the case put up against A-38 is genuine. PW 135 is very truthful, natural and dependable PW and that there is nothing to doubt the version of the most reliable and natural witness as has been discussed at an appropriate place. He is also proved to be one of the conspirators.

(19.3) The oral testimony of PW 34, Yadi of TIP, Exh.235, TIP Panchnama Exh.236, proves the case against the accused.

(19.4) A-38 is the close aide of A-37, he was identified as the P.A. of A-37 by PW-52 which is a strong circumstance against him.

He has been identified by PW 202 instead of A-20 which is a strong circumstance against him.

[20] A-39 :

The prosecution has examined about **4** witnesses who proved involvement of this accused. All of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(20.1) This accused is one of the conspirators who has been implicated in the crime by PW-109, 170 and 202 in the morning occurrence. There is nothing to doubt the involvement of this accused in the crime, who also resides at Chharanagar, close-by to the site of the occurrence.

(20.2) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per

that conclusion, the name of **A-39** is involved in **1** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[21] A-40:

The prosecution has examined about **6** witnesses who proved involvement of this accused. Two of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(21.1) This accused is also one of the conspirator, he is son of the deceased leader of this communal riot viz. Bhavani. PW-184 and PW-209 implicate this accused respectively in the morning and evening occurrences.

(21.2) This accused was also involved in the crime by PW-142, 156, 203 and 212 but, as far as this accused is concerned,

the prosecution case is proved by PW-184 and PW-209. This accused resides very close-by to the site of offence.

(21.3) He was conspirator as well as member of unlawful assembly.

[22] A-41:

The prosecution has examined about **24** witnesses who proved involvement of this accused. Nineteen of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(22.1) This accused is a close aide of A-37 who was a canvasser and propagator of A-37 during the elections. PW-73, 109, 113, 145, 167, 184, 188, 202, 230, 233, 104, 149, 192, 198 and 108 have involved this accused in the morning accused.

(22.2) This accused is involved through PW-175 in the noon occurrence.

(22.3) This accused is also involved in the crime through PW-73 and PW-174 in the evening occurrence.

(22.4) Since the prosecution has established its case through satisfactory and sufficient oral evidence against this accused, it is thought proper to also take aid of extrajudicial confession, wherein, the co-accused A-21 and A-22 have involved this accused in the crime.

(22.5) This accused is also one of the conspirators. The accused has also been identified by the police witnesses. He was involved in all the offences committed throughout the day in all the occurrences.

(22.6) PW-104, 174, 184, 73, 230 involve this accused in possession and use of fire arm which was a private firing.

(22.7) This accused, through PW-233 is found to have been involved in burning Nurani by throwing kerosene in the morning occurrence.

(22.8) A sword was discovered from this accused.

(22.9) PW-105, 189, 1190, 204 and 258 have also implicated this accused but, their oral evidence has not been considered in holding the accused guilty.

(22.10) This accused has his residence very close-by to the site of offence and even his place of business was also in the same area, he was well known in the area.

(22.11) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-41** is involved in **9** complaints

which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[23] A-42 :

The prosecution has examined about **2** witnesses who proved involvement of this accused. Both of them have been found dependable.

(23.1) As emerged on record, this accused was previously resident of this locality, he has been involved in the crime through PW-150 and PW-183 in the morning occurrence. This accused shall be held liable of the offences committed in the morning by the unlawful assembly and even as conspirator.

(23.2) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are

different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-42** is involved in **3** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[24] A-44 :

The prosecution has examined about **37** witnesses who proved involvement of this accused. Twenty Seven of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(24.1) This accused is also a close aide of A-37, he is a

leader of B.J.P., he was offering the services of his office to be used as office for B.J.P. Candidate in his area, his office, viz. the showroom was very very close-by to the site of the offence and that he is a known person in the entire area. He is proved to have been in possession of weapons and many of the prosecution witnesses have proved the case against him beyond all reasonable doubts.

(24.2) PW-107, 115, 142, 144, 145, 157, 170, 184, 186, 188, 200, 202, 213, 234, 258, 136, 149, 192, 198, 227, 52, 143 and 108 are the 23 PWs found reliable who implicate this accused in the offences committed in the morning beyond all reasonable doubt.

(24.3) PW-142, 175 and 260 involve this accused in the noon occurrences.

(24.4) Presence and participation of this accused is also proved in the evening occurrences through oral evidence of PW-37 and 143.

(24.5) Having procured sufficient, satisfactory, positive and clinching evidence against the accused, it would be proper to take aid of extra judicial confession wherein co-accused A-21 and A-22 involve this accused in the crime.

(24.6) This accused is also one of the conspirators who was in fact, one of the leaders of the entire crime. His participation is in all the occurrences which shows that he was present and has participated in the offences committed throughout the day.

(24.7) This accused has been seen with firearm in the morning by PW-52, 200, etc.

(24.8) Through the discovery panchnama at the instance of this accused, a sword used in commission of the offence has been discovered.

(24.9) PW-73, 105, 169, 179, 193, 213, 233, 235, 243, 249 and 236 also involve this accused in the crime but, the Court has not relied upon the above referred witnesses to hold the accused guilty as these PW have only named the accused but could not identify the accused.

(24.10) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-44** is involved in **20** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the

accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[25] A-45:

The prosecution has examined about **4** witnesses who proved involvement of this accused. Three of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(25.1) He is one of the conspirators, close aide of A-37, has been involved in the crime by reliable PW-149 and 198. Since sufficient and satisfactory evidence is available against this accused, it is thought proper to record that the guilt of this accused is also corroborated by the fact that the co-accused have also involved this accused in the crime through extra judicial confessions by the co-accused, A-21 and A-22.

(25.2) PW-184 has also involved this accused but, only the above PWs have been relied upon by this Court. He was a member of unlawful assembly.

(25.3) This accused resides close-by to the site of the offence and is having his business place of pan galla near the site.

[26] A-46 :

(26.1) The accused resides very close-by to the site of the offence, PW-149 is a reliable witness who implicates this accused in the crime proving his presence in the morning as well as the noon occurrence. This accused is also one of the conspirator and had played a leading role as member of unlawful assembly.

The prosecution has examined about **2** witnesses who proved involvement of this accused in breaking the Jawan Nagar wall, unduly entering into the chawls and mainly participating in both the occurrences. Both of them have been found dependable and one of them involves the accused in two of the occurrences viz. morning as well as noon, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

[27] A-47 :

The prosecution has examined about **2** witnesses who proved involvement of this accused. Both of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(27.1) PW-235 implicates this accused in the morning occurrence, who resides very close-by to the site of the offence, the witness is quite reliable, there is nothing to doubt the version of the witness implicating this accused. This accused was conspirator as well as member of unlawful assembly.

[28] A-52 :

The prosecution has examined about **5** witnesses who proved involvement of this accused. All of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(28.1) PW-198 implicates this accused in the morning as well as in the evening occurrence, he is also one of the conspirators. He was also member of the unlawful assembly. In the R & P of C-Summary his name has been revealed in the complaint filed by father of PW-217 and 218 which is at EXH.1776/1.

(28.2) PW-198, 217 and 218 satisfactorily implicate this accused in the crime, who has participated in killing Rabiyabibi in the evening occurrence.

(28.3) In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **A-52** is involved in **2** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then,

this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C'- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[29] A-53 :

The prosecution has examined about **2** witnesses who proved involvement of this accused. Both of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(29.1) This witness has been identified in the T.I. parade, he was involved in the evening occurrence, which are the most serious occurrences, PW-209 implicates this accused in the crime, he was even identified in the T.I. Parade. This accused is also residing in the vicinity of the site of the offence.

(29.2) The oral evidence of PW-36 and PW-209 read with Exh.245, TIP Panchnama, Exh.244 Yadi etc. prove the case against the accused. He was member of the unlawful assembly.

[30] A-55 :

The prosecution has examined about **5** witnesses who

proved involvement of this accused. Three of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(30.1) This accused is one of the conspirators, he is implicated in the crime by PW-143 in the morning occurrence and by PW-143 and PW-203 in the evening occurrence. He is found to have participated in the occurrence of murder of Aiyub and murder of Sharif. This accused is one of the conspirators and the member of unlawful assembly.

(30.2) Having procured sufficient evidence on record and when the prosecution has successfully proved the guilt of the accused, it sounds fitting to also note that the extra judicial confessions of A-21 and A-22 corroborate the culpability of this accused in the crime.

(30.3) This accused has also been implicated by PW-73 and 137 but, the Court has relied upon the above referred witnesses only.

[31] A-58 :

The prosecution has examined about **2** witnesses who proved involvement of this accused. both of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(31.1) This accused has been found to have been involved in the charged offences by the testimony of PW-192 who truly identified the accused. This accused is admittedly doing his

business of selling milk and other such items in the vicinity of Patiya and is admittedly known to the victims of the crime. No doubt is created about identity of the accused, who has been projected as a leading person. This PW-192 is supported by PW 104 who has also seen this accused in the mob on that day. This adds strength to the testimony of PW-192 and that the testimony about his presence as a strong circumstance corroborates the evidence put on record by PW-192. PW-192 also identified the accused right in the statement mentioning the address of his shop. He has been in the mob which was violent, was throwing stones, bottles, etc. The accused being a conspirator, his intentions are too clear and being in the mob which proves the accused to have been sharing common objects of the unlawful assembly formed there to execute the conspiracy.

(31.2) This accused has also been held to be one of the conspirator whose intimacy with A-37 is also on the record of the case.

[32] A-60 :

The prosecution has examined about **4** witnesses who proved involvement of this accused. Two of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(32.1) This accused is found to have been involved in the evening occurrence as a member of the unlawful assembly who did the evening occurrence. This accused is involved by the reliable PW-209.

(32.2) The accused has also been involved by PW-37 and PW-212 but, the Court has placed its reliance on PW-209.

The accused was a member of unlawful assembly in the evening.

[33] A-62 :

The prosecution has examined about **4** witnesses who proved involvement of this accused. Three of them have been found dependable, by even not treating the police witnesses as solely reliable to conclude the guilt of the accused.

(33.1) This accused is residing in the S.R.P. Quarters which is very close-by to the site of the offence. He has been implicated in the crime by PW-157 and PW-236 who are found to be reliable witnesses. This accused was also involved by PW-52 but then, the Court has only relied upon the above referred witnesses. This accused has taken a defence contending that he has no connection with A-37 and that he was never her P.A. But, as emerges from the oral evidence of the witnesses A-62 was one of the leading persons of the area and was a political worker.

(33.2) If the documents produced by A-44 is seen, then it becomes clear that this accused was also a member of Ekta Samiti of the police station and that according to the documents produced by A-44 he can be a member of the said Peace Committee only if he is closed to A-37 or the Councilor of the area. This supports the case of the prosecution of the

accused being a close aid of A-37.

[34] Deceased Accused (Conspirators as well as members of unlawful assembly) :

[a] Guddu, Jai Bhavani, Dalpat, A-35, Jashvant @ 'Laliyo' and Raju Ratilal have been proved to be conspirators and that they were also members of unlawful assembly in different occurrences.

Guddu, Bhavani and Dalpat were among the main leaders of the entire communal riots on that day.

[b] GUDDU :

[b-1] Guddu has been implicated in all by 61 PWs in the charged offences. He has been involved by 29 PW in the morning occurrence, by 16 PW in the noon occurrence and by 16 PW in the evening occurrence. Guddu has been proved to be a conspirator, discovery panchnama was drawn at his instance where, he discovered the weapon used by him in the crime. He was involved in all the three occurrence and has participated in the murders of family members of PW-72, Aiyub, Sharif, Siddique, Mohammad Aiyub Allabax, crippled Moiyuddin, etc. He has also been found involved in attacking Muslim Chawls, in dragging Kaushar, giving pipe blows to the victims, etc. All the charged offences stand proved to have been committed by this accused beyond all reasonable doubt as a conspirator and as a member of the unlawful assembly.

[b-2] In the documentary evidence brought on record

from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of Guddu is involved in **10** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[c] JAI BHAVANI :

[c-1] In all 53 PW have implicated this accused among them, about 19 PW have involved Bhavani in the morning occurrence, 11 PW have involved him in the noon occurrence and 23 PW have involved him in the evening occurrence. He is also involved in the murders of family members of PW-106, 72,

Sharif, Siddique, etc. This accused has also attacked Muslim Chawls, dragged Kaushar, played his role in different occurrences like rape of Zarina, Farhana. Through the discovery panchnama, kerosene tin has been discovered at his instance. He was also a conspirator.

In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **Jai Bhavani** is involved in **7** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency upon the insistence of the defence.

[d] DALPAT :

[d-1] About 10 PW involved this accused. Three PW have involved him in the morning occurrence, another three have involved him in the noon occurrence and about 4 PW have involved him in the evening occurrence. He was involved in the murder of Sharif and he was also a conspirator.

In the documentary evidence brought on record from the Court of learned Metropolitan Magistrate, that of R & P of the 'C' Summaries filed by the Crime Branch, there are different complaints for different occurrences. All these complaints are related to the communal riots at Naroda Patiya. In the Chapter of R & P of 'C' Summaries at Part-2, it has been summarized that the names of the different accused have been involved in different complaints for how many times. As per that conclusion, the name of **Dalpat** is involved in **2** complaints which is a strong circumstance, corroborating clear involvement of this accused in the crime. It is true that these complaints either were not investigated or in any case, not at all tried before this Court. Hence, the defence has not got opportunity to cross examine those complainants. But then, this Court is not concluding the guilt of the accused basing upon these complaints. It is only after marshalling all the available evidences on record against the accused, when the conscience of this Court is satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C- Summary, have been called into aid. It is fitting to note that the R & P of 'C' Summaries had to be called upon by the prosecuting agency

upon the insistence of the defence.

[e] A-35, JASHVANT, RAMESH & RAJU RATILAL :

[e-1] A-35 has been found involved by PW-238. He was also a conspirator, Jashvant is involved by PW-235, Ramesh has been involved by PW-149 and Raju has been involved by PW-250 who all are also conspirators. Benefit of doubt was available to Raju Ratilal. Thus, the remaining accused have been held to be conspirators as well as members of unlawful assembly.

[35] From the discussion as above, the only conclusion that follows is that the below mentioned 32 live accused needs to be held guilty as the offences committed by them from among the charged offences stands proved beyond all reasonable doubt. As a result, the conviction of the 32 live accused to be mentioned herein below can only be the final conclusion.

In light of the foregoing discussion, this Court answers the Point of Determination No.16 as below while concluding the matter finally wherein 32 accused shall be held guilty whereas 29 accused shall be granted benefit of doubt as decided herein below in the final order.

Ponderable Points :

[a] Treatment by Court, for one murder cannot be treatment for massacre - of 96 murders.

[b] Delay in trial does not take away the feature of rarest of

rare case from the facts of the case but, it can save the accused from capital punishment.

[c] EXH.662, the inquest panchnama of 58 dead bodies shows that all the 58 human beings had died at the same place more or less at the same time which needs a special note.

[d] To hold the accused guilty, principle of joint liability is invoked but, for imposing punishment principle conspirators, woman, leading accused and follower accused, need to be dealt separately.

[e] Riot must be curbed with iron hands.

-:: FINAL ORDER ::-

[I] BENEFIT OF DOUBT TO ALL:

The accused **No.1 to 34** and **36 to 62** are all acquitted by granting them benefit of doubt for the charge for the offences u/s.145 r/w. Sec/149 I.P.C. and Sec.186, 201, 295(A), 298, 315, 332 and 395, 396, 397 and 398 r/w. Sec.149 of I.P.C. and or same offences r/w. Sec.120-B of the I.P.C.

[II] GUILTY:

1. Accused No.1 viz. **Naresh Agarsinh Chhara** accused in Sessions Case No.235/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same sections r/w. Sec.120-B of the I.P.C. (For the

offences committed in the morning, noon and evening occurrences.)

A-1 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

A-1 is acquitted by granting him benefit of doubt for the charged offences u/s.354 and 376(2)(g) r/w. Sec.34 of the I.P.C.

2. Accused No.2 viz. **Morlibhai Naranbhai Sindhi @ Murli** accused in Sessions Case No.235/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning, noon and evening occurrences.)

A-2 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

3. Accused No.4 viz. **Ganpat Chhanaji Didawala (Chhara)** accused in Sessions Case No.235/2009 is convicted for the offences committed u/s.143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. (For the offences committed in the noon occurrences.)

A-4 is also convicted for the offence committed u/s.188 of the I.P.C. and Sec.135(1) of B.P. Act.

A-4 is granted benefit of doubt u/s.295 and 153A(2) r/w. Sec.149 of I.P.C.

A-4 is also granted benefit of doubt for the charge u/s.120-B, u/s.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302, 307 all r/w. Sec.120-B of I.P.C.

4. Accused No.5 viz. **Vikrambhai Maneklal Rathod (Chhara) @ Tiniyo** accused in Sessions Case No.235/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning and noon occurrences.)

A-5 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

5. **Accused No.10 viz. Haresh @ Hariyo Son of Jivanlal @ Agarsing Rathod (Chhara)** accused in Sessions Case No.235/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning, noon and evening occurrences.)

A-10 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

A-10 is acquitted by granting him benefit of doubt for the charged offences u/s.354 and 376(2)(g) r/w. Sec.34 of the

I.P.C.

6. **Accused No.18 viz. Babubhai @ Babu Bajrangi Son of Rajabhai Patel** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. 149 of I.P.C., Sec.295, 427, Sec.435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning and evening occurrences.)

A-18 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

7. **Accused No.20 viz. Kishan Khubchand Korani** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning and evening occurrences.)

A-20 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

8. **Accused No.21 viz**. **Prakash Sureshbhai Rathod (Chhara)** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w.

Sec.120-B of the I.P.C. (For the offences committed in the morning, noon and evening occurrences.)

A-21 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

9. **Accused No.22 viz. Suresh @ Richard @ Suresh Langado Son of Kantibhai Didawala (Chhara)** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning, noon and evening occurrences.)

A-22 is also convicted for the offence committed u/s.188, 120-B, 354 and 376 of the I.P.C. and Sec.135(1) of B.P. Act.

A-22 is acquitted by granting him benefit of doubt for the charged offences u/s.376(2)(g) r/w. Sec.34 of the I.P.C.

10. **Accused No.25 viz. Premchand @ Tiwari Conductor Son of Yagnanarayan Tiwari** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning, noon and evening occurrences.)

A-25 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

11. **Accused No.26 viz. Suresh @ Sehjad Dalubhai Netlekar (Marathi Chharo)** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning, noon and evening occurrences.)

A-26 is also convicted for the offence committed u/s.188, 120-B of the I.P.C. and Sec.135(1) of B.P. Act.

A-26 is acquitted by granting him benefit of doubt for the charged offences u/s.354 and 376(2)(g) r/w. Sec.34 of the I.P.C.

12. **Accused No.27 viz. Navab @ Kalu Bhaiyo Harisinh Rathod** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-27 is also convicted u/s.120-B of I.P.C. and 135(1) of the B.P. Act. A-27 is acquitted by granting him benefit of doubt for the offence committed u/s.188 of I.P.C.

13. **Accused No.28 viz. Manubhai Keshabhai Maruda** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. (For the offences committed in the noon and evening occurrences.)

A-28 is also convicted for the offence committed u/s.188 of the I.P.C. and Sec.135(1) of B.P. Act.

A-28 is granted benefit of doubt u/s.295 and Sec.153-A(2) r/w. Sec.149 of I.P.C.

A-28 is also granted benefit of doubt for the charge u/s. 120-B, u/s.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302, 307 all r/w. Sec.120-B of I.P.C.

A-28 is granted benefit of doubt for the charge u/s.354 and 376(2)(g) r/w. Sec.34 of the I.P.C.

14. **Accused No.30 viz. Shashikant @ Tiniyo Marathi Son of Yuvraj Patil** accused in Sessions Case No.236/2009 is convicted for the offences committed u/s.143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. (For the offences committed in the noon and evening occurrences.)

A-30 is also convicted for the offence committed u/s.188 of the I.P.C. and Sec.135(1) of B.P. Act.

A-30 is granted benefit of doubt u/s.295 and 153-A(2) r/w. Sec.149 of I.P.C.

A-30 is also granted benefit of doubt for the charge

u/s.120-B, u/s.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302, 307 all r/w. Sec.120-B of I.P.C.

A-30 is granted benefit of doubt for the charge u/s.354 and 376(2)(g) r/w. Sec.34 of the I.P.C.

15. **Accused No.33 viz. Babubhai @ Babu Vanzara Son of Jethabhai Salat (Marvadi)** accused in Sessions Case No.242/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-33 is hereby granted benefit of doubt u/s.188 of I.P.C.

A-33 is hereby convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

16. **Accused No.34 viz. Laxmanbhai @ Lakho Son of Budhaji Thakor** accused in Sessions Case No.243/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-34 is hereby granted benefit of doubt u/s.188 of I.P.C.

A-34 is hereby convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

17. **Accused No.37 viz. Dr.Mayaben Surendrabhai Kodnani** accused in Sessions Case No.243/2009 is convicted for the offences committed u/s.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.120-B of the I.P.C. (For the offences committed for the entire day.)

A-37 is also convicted for the offence committed u/s.120-B of the I.P.C.

A-37 is acquitted by granting her benefit of doubt for the offence u/s.143, 144, 147, 148, 153, 153-A, 153-A(2), 295, 302, 307, 323, 324, 325, 326, 427, 435, 436, 440 r/w. Sec.149 of the I.P.C. u/s.188 0f I.P.C. and u/s.135(1) of B.P.Act

18. **Accused No.38 viz. Ashok Hundaldas Sindhi** accused in Sessions Case No.245/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-38 is hereby granted benefit of doubt u/s.188.

A-38 is convicted u/s. 120-B of I.P.C. and Sec.135(1) of the B.P. Act.

19. **Accused No.39 viz. Harshad @ Mungda Jilagovind Chhara Parmar** accused in Sessions Case No.245/2009 is convicted for the offences committed u/s.143, 144, 147,

148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-39 is acquitted by granting him benefit of doubt for the offence committed u/s.188 of the I.P.C.

A-39 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

20. **Accused No.40 viz. Mukesh @ Vakil Ratilal Rathod Son of Jaybhavani** accused in Sessions Case No.245/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning and evening occurrence.)

A-40 is convicted for the offence committed u/s.188 of the I.P.C.

A-40 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

A-40 is acquitted by granting him benefit of doubt for the charged offences u/s.354 and 376(2)(g) r/w. Sec.34 of the I.P.C.

21. **Accused No.41 viz. Manojbhai @ Manoj Sindhi Son of Renumal Kukrani** accused in Sessions Case No.245/2009 is convicted for the offences committed

u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning, noon and evening occurrences.)

A-41 is also convicted for the offence committed u/s.188 of the I.P.C.

A-41 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

22. **Accused No.42 viz. Hiraji @ Hiro Marvadi @ Sonaji Son of Danaji Meghval (Marvadi)** accused in Sessions Case No.245/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same offences r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-42 is acquitted by granting him benefit of doubt for the offence committed u/s.188 of the I.P.C.

A-42 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

A-42 is acquitted by granting him benefit of doubt for the charged offences u/s.354 and 376(2)(g) r/w. Sec.34 of the I.P.C.

23. **Accused No.44 viz. Bipinbhai @ Bipin Autowala Son of Umedrai Panchal** accused in Sessions Case

No.245/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same sections r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning, noon and evening occurrences.)

A-44 is also convicted for the offence committed u/s.188 of the I.P.C.

A-44 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

24. **Accused No.45 viz. Ashokbhai Uttamchand Korani (Sindhi)** accused in Sessions Case No.246/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same sections r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-45 is acquitted by granting him benefit of doubt for the offence committed u/s.188 of the I.P.C.

A-45 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

25. **Accused No.46 viz. Vijaykumar Takhubhai Parmar** accused in Sessions Case No.246/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C.

and for the same sections r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning and noon occurrence.)

A-46 is convicted for the offence committed u/s.188 of the I.P.C.

A-46 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

26. **Accused No.47 viz. Ramesh Keshavlal Didawala (Chhara)** accused in Sessions Case No.246/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same sections r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-47 is acquitted by granting him benefit of doubt for the offence committed u/s.188 of the I.P.C.

A-47 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

27. **Accused No.52 viz. Sachin Nagindas Modi** accused in Sessions Case No.246/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same sections r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning and evening occurrence.)

A-52 is convicted for the offence committed u/s.188 of the

I.P.C.

A-52 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

28. **Accused No.53 viz. Vilas @ Viliyo Prakashbhai Sonar** accused in Sessions Case No.246/2009 is convicted for the offences committed u/s.143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. (For the offences committed in the evening occurrence.)

A-53 is also convicted for the offence committed u/s.188 of the I.P.C. and u/s.135(1) of the B.P. Act.

A-53 is granted benefit of doubt u/s.295 and Sec.153A(2) r/w. Sec.149 of I.P.C.

A-53 is also granted benefit of doubt for the charge u/s.120-B, u/s.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302, 307 all r/w. Sec.120-B of I.P.C.

29. **Accused No.55 viz. Dinesh @ Tiniyo Govindbhai Barge (Marathi)** accused in Sessions Case No.246/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same sections r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning and evening occurrence.)

A-55 is convicted for the offence committed u/s.188 of the I.P.C.

A-55 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

30. **Accused No.58 viz. Santoshkumar Kodumal Mulchandani, known as Santosh Dudhwala** accused in Sessions Case No.246/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same sections r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-58 is acquitted by granting him benefit of doubt for the offence committed u/s.188 of the I.P.C.

A-58 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

31. **Accused No.60 viz. Pintu Dalpatbhai Jadeja (Chhara)** accused in Sessions Case No.270/2009 is convicted for the offences committed u/s.143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. (For the offences committed in the evening occurrence.)

A-60 is also convicted for the offence committed u/s.188 of the I.P.C. and u/s.135(1) of the B.P. Act.

A-60 is granted benefit of doubt u/s.295 and 153A(2) r/w. Sec.149 of I.P.C.

A-60 is also granted benefit of doubt for the charge u/s.120-B, u/s. 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302, 307 all r/w. Sec.120-B of I.P.C.

32. **Accused No.62 viz. Kirpalsing Jangbahadursing Chhabda,** accused in Sessions Case No.270/2009 is convicted for the offences committed u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. Sec.295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 r/w. Sec.149 of I.P.C. and for the same sections r/w. Sec.120-B of the I.P.C. (For the offences committed in the morning occurrence.)

A-62 is acquitted by granting him benefit of doubt for the offence committed u/s.188 of the I.P.C.

A-62 is hereby also convicted u/s.120-B of I.P.C. and Sec.135(1) of the B.P. Act.

[III] From the 32 accused who have been held guilty, accused No.30, 33, 55, 60 and 62 are in jail. The accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 26, 27, 28, 34, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53 and 58 are on bail. All these accused, since have been convicted, are hereby directed to be immediately taken into custody.

Their bail bonds stand canceled.

[IV] A-26, has not appeared since the last adjournment, hence, N.B.W. was issued against him which has not been executed. Today also, A-26 has not appeared. As, there

are more than one accused among whom A-26 has not attended the Court, in order to avoid undue delay in the disposal of the case, this Court has pronounced the judgment notwithstanding the absence of A-26 [Sec.353(6) of the Cr.P.C.].

A-26 has been convicted today by this Court.

[V] All the above convicted 32 accused shall be heard on the point of quantum of sentence.

[VI] The following accused have been granted benefit of doubt for the charge u/s.120-B, u/s.143, 144, 147, 148 r/w. Sec.149 of I.P.C. and Sec.153, 153-A, 153-A(2), 295, 323, 324, 325, 326, 427, 435, 436, 440, 302, 307, all r/w. Sec.120-B and all r/w. Sec.149 of I.P.C. and Sec.188 of I.P.C. and Sec.135(1) of the B.P. Act.

In addition A-48 has been granted benefit of doubt for charge against him u/s.354 and 376(2)(g) r/w. Sec.34 of I.P.C.

1. A-3 Umeshbhai Surabhai Bharwad (Sessions Case No.235/2009),

2. A-6 Rajesh @ Panglo Son of Kantilal Parmar (Chhara) (Sessions Case No.235/2009),

3. A-7 Champak Himmatlal Rathod (Chhara) (Sessions Case No.235/2009),

4. A-8 Ravindra @ Batakiyo Kantilal Parmar (Sessions Case No.235/2009),

5. A-9 Amrat @ Kalu Babubhai Rathod (Chhara) (Sessions Case No.235/2009),

6. A-11 Kaptansing Javansing Parmar (Chhara) (Sessions Case No.235/2009),

7. A-12 Fulsing Chandansing Jadeja (Chhara) (Sessions Case No.235/2009),

8. A-13 Deepak Kantilal Rathod (Chhara) (Sessions Case No.235/2009),

9. A-14 Mahesh Veniram Rathod (Chhara) (Sessions Case No.235/2009),

10. A-15 Yogesh @ Munno Son of Narayanrav Tikaje (Sessions Case No.235/2009),

11. A-16 Dhanraj Vaghumal Sindhi (Sessions Case No.235/2009),

12. A-17 Nandlal @ Jeki Son of Vishnubhai Chhara (Sessions Case No.235/2009),

13. A-19 Padmendrasinh Jashwantsinh Rajput (Sessions Case No.236/2009),

14. A-23 Ashok Silvant Parmar (Chhara) (Sessions Case

No.236/2009),

15. A-24 Rajkumar @ Raju Son of Gopiram Chaumal (Sessions Case No.236/2009),

16. A-29 Prabhashankar @ Prabha Pandit Shivshankar Mishra, (Sessions Case No.236/2009),

17. A-31 Ankur @ Chintu Son of Ashokbhai Parmar (Sessions Case No.241/2009),

18. A-32 Shivdayal @ Raj Hakamsingh Rathod (Sessions Case No.241/2009),

19. A-36 Janaksinh Dharamsinh Nehra @ Janak Marathi (Sessions Case No.243/2009),

20. A-43 Haresh Parshuram Rohera, (Sessions Case No.245/2009),

21. A-48 Kishanbhai Shankarbhai Mahadik, (Sessions Case No.246/2009),

22. A-49 Ranchhodbhai Manilal Parmar, (Sessions Case No.246/2009),

23. A-50 Badal Ambalal Parmar (Chhara), (Sessions Case No.246/2009),

24. A-51 Navin Chhaganbhai Bhogekar(Chhara) (Sessions Case No.246/2009),

25. A-54 Nilam Manohar Chaubal (Marathi) (Sessions Case No.246/2009),

26. A-56 Geetaben, daughter of Ratilal @ Jaybhavani Rathod, (Sessions Case No.246/2009),

27. A-57 Pankajkumar Mohanlal Shah (Sessions Case No.246/2009),

28. A-59 Subhashchandra @ Darji Son of Jagganath Darji, known as Maharashtrian Darji, (Sessions Case No.243/2009) and

29. A-61 Ramilaben daughter of Ratilal @ Jaybhavani Somabhai Rathod, (Sessions Case No.270/2009).

[VII] A-8, A-11, A-15, A-36, A-49, A-57 and A-59 (all U.T.P.) whose names have been shown herein above be set at liberty forthwith, unless required to be detained in some other case.

[VIII] A-3, A-6, A-7, A-9, A-12, A-13, A-14, A-16, A-17, A-19, A-23, A-24, A-29, A-31, A-32, A-43, A-48, A-50, A-51, A-54, A-56 and A-61 whose names have been mentioned herein above, are all on bail. Their bail bonds stand discharged.

[IX] However, these above named 29 accused who are acquitted today are hereby ordered to execute a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one solvent surety of like amount, by each one of them, to the satisfaction of this Court, till the appeal period is over,

with a condition that they shall not leave the State of Gujarat without permission of this Court till the appeal period is over.

Pronounced in the open Court today on this 29th day of August, 2012.

(**Dr. Smt. Jyotsna Yagnik**)
Special Judge,
Court for conducting Speedy
Trial of Riot Cases, situated at
SIT Courts, Old High Court
Building, Navrangpura,
Ahmedabad.

All the accused who have been held guilty and who have been granted benefit of doubt have been explained in Gujarati about the final order stated herein above.

Further Final Order

Heard Ld. Spl. P.P. Mr. A.P. Desai with Ld. Asst. Spl. P.P. Ms. Hema Rajput and Ld. Asst. Spl. P.P. Mr. Gaurang Vyas.

Heard Ld. advocates Mr. N.M. Kikani, Mr. R.N. Kikani, Mr. H.S. Rawat, Mr. K.N. Thakur and Mr. G.S. Solanki for the convict accused.

Heard all the convict accused in addition to the submissions of their respective learned advocates.

1. The arguments raised by learned advocates Mr.N.M.Kikani, Mr.R.N.Kikani Mr.K.N.Thakur which were adopted by Ld. advocate Mr.H.S.Ravat and Mr.G.S.Solanki for the accused were mainly to the effect that, this case cannot be termed to be rarest of rare case, it is also mainly on the premise that the incident had happened in response to Godhra massacre which is the first and foremost cause and that the pre-planning was not there, there is invocation of joint liability, hence, the minimum sentence would suffice the purpose. The convicts are not the habitual offenders and looking to their age, family background, this is a fit case to impose minimum punishment. The riot in the entire Gujarat was widespread on 28/02/2002 in which the people gathered and therefore, there is in fact, nothing which can be termed to be planned murders.

2. Ld. advocate Mr. R.N. Kikani has invited the attention of the Court on a Judgment cited at **G.L.R. XLVII (I) page No.676** to submit that the trial Court has duty to elicit information from the accused and inflict a just punishment keeping in mind age, family background and antecedents of the accused. It was urged that minimum sentence may only be imposed.

3. As required u/s.235(2) of the Cr.P.C. this Court has also heard each of the convict accused in person. Some of the accused have chosen to submit to the Court on quantum of sentence to be imposed on them for three times within two hours while the Court was in its session which was also heard patiently by the Court. All these submissions have been considered by the Court. All the convict accused have urged for mercy and to impose minimum sentence on them on the

grounds submitted by them which have been reproduced herein under :

- A-1 has submitted that he is poor, a married man, having family responsibility including that of mother.

- A-2 has submitted that he is the only breadwinner of his family, his wife is unwell and he himself is patient of B.P.

- A-4 has submitted that he has children, mainly daughters, his family will be in precarious condition and that he himself is a heart patient.

- A-5 and A-10 have made similar submission as where made by A-2.

- A-18 has also made submission like A-2. In addition thereto he submits that he is a businessman and he has never done any crime. A-18 has submitted that he has not even killed an ant which may be considered.

- A-20 submits that he is a cancer patient from the year 2002, he is a corporator, he is a reputed person and has great name and fame coupled with too much of fame in Bharatiya Janata Party to which party he belongs.

- A-21 has submitted that his father has abandoned them, he has daughters, wife, mother and he is a young person.

- A-22 has submitted that he has two children having Muslim wife and he himself is physically challenged person.

- A-25 has submitted that his wife would be all alone who has suffered two attacks.

- A-27 has submitted that his elder brother is a crippled person, mother is widow and he is the only earning person.

- A-28 has made a similar submission as that of A-2.

- A-30 has made a similar submission as that of A-27.

- A-33 has submitted that he has five daughters, his own shop was burnt, his wife is unwell and his shop was burnt in the riot.

- A-34 has submitted that he has three small children, younger brother is suffering from cancer and is on the last stage.

- A-37 has submitted that she and her husband are residing alone, the son is at U.S.A., she herself is a patient and she is victim of politics.

- A-38, A-39, A-42, A-45, A-47, A-62 have made similar submissions like A-2 mainly focusing the facts that they are the only breadwinner for the family and they have the family responsibility. A-62 has made a specific submission that he has no acquaintance, family friend or kith and kin in Gujarat.

- A-41 has submitted that only before two months from today, he has suffered attack of paralysis, he does not keep well and that his daughters are studying.

- A-44 has submitted that he has responsibility towards his old and unwell parents, he is a businessman, daughter is studying in science faculty and he himself is the victim of the riot.

- A-46 has submitted that he is a rickshaw driver having children and family and is suffering from cancer.

- A-52 has submitted that he is a convict of life imprisonment, he has widow mother and a daughter aged 6 years and that the time he has passed in the jail needs to be set off though he was bailed out in this offence, but he was in prison because of another offence.

- A-53 has submitted that he has old parent and he looks after and maintains them.

- A-55 has submitted that he has child aged two years, his younger brother is mentally unwell, parents are unwell and that his father is retired.

- A-58 has submitted that he is a businessman, he has a little son, wife is bedridden and operated and he himself is suffering from diabetes.

- A-60 has submitted that he has three daughters, mother is unable to walk, father had passed away and has family responsibility.

4. Learned Special P.P. Mr.A.P.Desai has mainly submitted that on the date of the occurrence, at the site, the persons were roasted alive, they were killed mercilessly and that the entire attack was without provocation, hence this being the rarest of rare case, death penalty is must. Victims are not the aggressor of the crime. Lenient view may not be taken. In such cases, life imprisonment is an exception and death penalty is a rule. To fortify his submission to impose death penalty

following citations were pressed into service by him :

(1) 1983 (0) GLHEL S.C. 16254;
In the matter between:
Machhising v. State of Punjab & Haryana

(2) 2002 (0) GLHEL S.C. 14921;
In the matter between:
Krishna Mochi v. State of Bihar

(3) (2011) 1 S.C.C. (cri.) 114;
In the matter between:
Sundersing v. State of Uttaranchal

(4) 2010 (Suppl.) Cri.L.J. (S.C.);
In the matter between:
Muniappan & Others v. State of Tamil Nadu

(5) (2012) 4 S.C.C. 37;
In the matter between:
Rajendra Prahalad Wasnik v. State of Maharashtra

(6) (2012) 4 S.C.C. 97;
In the matter between:
Sonu Sardar v. State of Chhattisgarh

To add strength to his alternate submission, he has relied upon following citations and has appealed to the Court that if the Court is not convinced on the submission that this case is the rarest of the rare case then, the principles of the following citations may be considered :

(1) 2008 (0) GLHEL S.C. 41824;
In the matter between:
Swamy Shraddhanand @ Murali Manohar Mishra v. State of Karnataka

(2) 2011 (1) S.C.C. (Cri.) 883;
In the matter between:
Rameshbhai Chandubhai Rathod v. State of Gujarat

(3) 2009 (0) GLHEL S.C. 47881;
In the matter between:

Ramraj @ Nanhoo @ Bihnu v. State of Chhattisgarh

(4) 2010 (2) GLH 471 (S.C.)
In the matter between:
Mullu & Another v. State of Uttar Pradesh

(5) (2012) 4 S.C.C. 107;
In the matter between:
Amit v. State of Uttar Pradesh

(6) (2012) 4 S.C.C. 257;
In the matter between:
Ramnaresh & Others v. State of Chhatisgarh

(7) (2012) 4 S.C.C. 289
In the matter between:
Brijendrasing v. State of Madhya Pradesh

5. Ld. advocate Mr.Y.B.Shaikh and Ld. advocate Mr. Samshad Pathan for the victims have submitted that to curb communal riots in future, stringent punishment needs to be imposed and that exemplary punishment can only serve the purpose of punishment.

6. Having perused the citations pressed into service, while appreciating the rival submission and upon consideration of the facts and circumstances of this case, following points have been considered by the Court to opine on the quantum of the sentence.

(a) While dealing with the factual submissions of the accused and of the learned advocates for the defence on the genesis of this communal riot to be Godhra train carnage it needs to be held that, communal riots are cancer for our very cherished constitutional value of secularism. There cannot be justification of crime for doing another crime as nobody can take law in one's own hands. Every citizen of this country must

understand, that one lives in the society where rule of law very much survives. On that day of the occurrence the accused by their acts and omissions have brought the situation of total subversion and erosion of rule of law. It was made the blood day on massive onslaught and the day of horrendous carnage. It is true that the predominant feeling among the convicts was to take revenge of the Godhra carnage but, that amounts to taking law into one's own hands which cannot be taken lightly by this Court.

(a-1) In the opinion of this Court no suffering is potent enough to justify taking law into one's hand. The act and omission of the accused amounts to self judging the cause which is a serious threat to rule of law and that it is for the said reasons such excuses like excitement due to Godhra Carnage are incapable to justify the offences committed by the accused and particularly cannot be accepted as mitigating circumstances.

In light of the above discussion, the submission that the genesis of this communal riot was Godhra Train Carnage, is not accepted as mitigating circumstance, rather it is pointing towards the common motive of the accused.

(b) This Court is in agreement with the submission that the Court is required to keep in mind the age, family circumstances and antecedents of the accused while imposing just punishment. But, while doing so, the Court has also to keep in mind the facts and circumstances in which the crime was committed, the outcome of the crime, the role played by the accused, the impact of crime on the victims and ultimate concept of penology, etc.

(c) This Court humbly but firmly opines that the grounds

advanced through the submissions by the accused are such which can be considered for certain accused but, the role played by some of the accused is such that grant of prayed sympathy would be thoroughly misplaced, unwarranted and amounts to ignore the agonies, sufferings, grief and overall plight of the victims and their families.

6. The points in favour of death penalty and the points to oppose death penalty are the subject of jurists. But, still however, so as to clarify as to what has weighed in the mind of the Court, following points have been noted.

(a) It is said and perceived by a common man that the Judges are sent on earth as God's civil servant to protect its citizens and to punish those who harm them. The Judge has to shoulder a great responsibility while trying any accused. The maxim of the equity that 'Justice not only should be done but, it must also appear to have been done' has to be saluted.

(b) Death penalty brings justice to those who have suffered and helps in reducing the crime, it mainly serves the purpose of deterrence. It is also important to keep the brightness of justice and public safety shining brightly on our society.

(c) At the end of 2009, about 139 countries had abolished the death penalty.

(d) There is a momentum of general suspension of capital punishment through out the world. To respect the right of those who are on the death row, the movement of active human right and moratorium on the use of death penalty in under serious consideration at United Nation.

(e) The progressive society restricts the use of the death penalty.

(f) Article 5 of Universal Declaration Of Human Rights popularly known as International Bill For Human Rights, guides to respect the human dignity, and it also says that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(g) Use of death penalty undermines human dignity. Moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights.

In nutshell these two dimensions on the use of death penalty emerged from the popular debate on death penalty shows that there are two dimensions for imposing this punishment.

7. The Facts Of This Case :

(a) The assault and the attack made by the aggressor accused was extremely brutal, gruesome, condemnable, inhuman, clearly violative of human rights and Constitutional rights of victims of this case.

(b) The 96 persons were killed mercilessly in a day and were reduced to grilled meat without any stimuli or provocation on their part. Among the deceased victims, there were women, old persons, helpless kids and even crippled person.

About 125 victims have been found to have been victims of crime of hurt, grievous hurt, attempt to murder, etc. Among

these helpless 125 persons there was even an infant aged 20 days.

(c) The killings of 96 persons was certainly targeted killing. It is proved to be a systematic campaign. It was to display the sparkling displeasure and total disapproval to the Godhra Carnage which, in fact, was the motive of the accused.

(d) The murders committed in this communal riot that too, of 96 Muslims in a day, cannot be termed to be usual set of murders, it is a case of race multiple murders which has marked a black dot on the secular salient feature of the Constitution of India.

(e) Throughout the day the massacre went on, but the worst part of the massacre was the gruesome and ghastly murders of 58 victims in the evening occurrence at one place itself.

(f) 28/02/2002 became the day of cyclone of violence, one of the black chapters in the history of democratic India where, violation of human rights and Constitutional rights were publicly done by the assaulters on the victims.

(g) Offences u/s. 354, 376 and 376 (2)(g) of I.P.C. have also been found to have been committed. It is different that except in case of A-22 no other accused could be held guilty for the commission of this offence. But still, the fact remains that such commission of offences against women were also committed in the public place, shamelessly and fearlessly by the tormentors.

(h) Thousands of the persons have attacked on weaponless,

helpless and frightened victims with intention, pre-planning and while sharing their common objects.

(i) The incident was horrifying and that tremendous loss of properties and human lives were suffered by them.

(j) About 57 occurrence PW, the three occurrences by the assembly went on throughout the day, damages of lakhs of rupees, disturbance, damages to household and business places, deaths, injuries violent disorder, outraging modesty, rapes, gang rapes, mass torching including of women, children, crippled, old, attack on dwelling houses, shops, cabins, carts by burning and destroying, which reduced the properties to ashes.

Atmosphere was surchilled with fear, anxiety, tension, and cries for help and mercy by the victims of bestial violence since mass extermination took place on that day where, free use of inflammable, lethal and deadly weapons was common by the accused.

(k) There are certain accused who have been proved to have remained present and have participated in all the three occurrences viz. morning, noon and evening occurrences. This reveals their commitment, their priority of the life, that tremendous bias and their throughout involvement in the crime which went on for the entire day.

These accused are such who have not spared a single minute of that day for any other task of their lives and that right from 9:30 a.m. to at least upto 7:30 to 8:00 p.m. they were very much on the site unceasingly and continuously doing different offences for which, they have been held guilty.

(k-1) It is fitting to take note of the fact that A-1, A-2, A-10, A-22, A-25, A-41 and A-44 were among these accused who have been undoubtedly implicated in the crime committed for the entire day by different reliable prosecution witnesses. Not only that, these 7 accused were also the leading conspirators of the entire conspiracy. Some of them were also close aide of A-37.

(k-2)A-18 is one of the principal conspirators, active overt actor of the communal riot on that day, leader and instigator for the co-accused as far as Naroda massacre is concerned. Over and above this, he was also an active member of the unlawful assembly in atleast two of the occurrences including the ghastly evening occurrence.

(k-3)A-37 has been proved to be the kingpin of the entire communal riot and one of the principal conspirators who has actively instigated the rioters and has abetted them to form unlawful assembly to execute the conspiracy hatched under her leadership with other co-conspirators.

(k-4) Even A-21 was also one of such accused who has been inferred to have been present and to have participated in the crime for the entire day. But then, his involvement is mainly based on the sting operation and it is a matter of record that as such, any of the victim PW has not involved him. As against that, the above referred 7 leading accused have been involved by numerous prosecution witnesses. A-21 deserves a little different treatment than which can be given to the 7 leading accused who took vigorous part in the entire conspiracy. These accused should not be given similar treatment as is given to the accused other than these accused.

(l) The gruesome and barbaric act of the accused and more particularly those seven accused who have been mentioned herein above, have crossed all limits of inhumanity. Their dastardly acts by killing as many as 96 victims by burning them alive at the site of the Muslim chawls itself is horrifying and terrifying commission of offences by these accused. At the khancha where alone 58 deceased were done away by reducing them to grilled meat can be visualized as ghastly site where, maximum number of victims died, human limbs were found scattered here and there, those who could fortunately survive, tried to save the unfortunate severely injured victims from the flames of fire, some of whom ultimately, succumbed to death even before getting the treatment.

(m) The submission of A-22 that he married to Muslim woman is not matter of consideration for this Court as no evidence is putforth for that, in any case, it is personal affairs of A-22. Moreover, picking up the clue from the sting operation of A-21 the co-accused, it is clear that he has nurtured tremendous hatred and enmity for Muslims and he being or staying with Muslim woman is only on some tussle with some Muslim.

He is guilty of maximum number of offences including his overt act in the highest number of murders, who does not deserve any sympathy as prayed.

There is nothing on record even to show that A-22 is lame and even if it is accepted to be hard reality, than also as is well known, the deep seated commitment, interest and involvement enable even the lame to climb up Himalayans then, why these commission of crimes by him cannot be believed.

(n) The submission of A-52 is supported by Sec.427(2) of Cr.P.C. hence, needs to be considered but, since over and above the principle of invocation of joint liability against A-52, he is also proved to be a merciless murderer of deceased Rabiabibi. In this case, he can be treated at par with other accused other than the nine accused for their similar role. Even according to him, he is convict for life in another case. This shows another serious offence to have been proved against him which all cannot be totally ignored by the Court. However, his statutory right shall be protected. He is however, not entitled for any set off as far as sentence of life imprisonment is concerned.

(o) The submission of A-37 that she is a victim of politics has been pleaded for the first time without any background created in the cross-examination of the PW and even through submission before this Court.

As a matter of fact, this Court has observed in its judgment that A-37 was tremendously favoured by the then investigating agencies. All care, at the cost of the duty of I.O. and even the interest of the victims of crime, was taken to see to it that, the involvement of A-37 does not come on the books. This fact, in comes in the way to believe that A-37 was ever a victim of any politics.

(p) Sickness of the accused shall be taken care of by the jail authority hence, the same needs no consideration by this Court.

7. Before opining it is useful to bare in judicial mind certain principles propounded by Hon'ble the Apex Court which are

guiding principles to be taken as a watchword in such kind of cases.

[a] In the matter between of **Amit v. State of Uttar Pradesh reported in (2012) 4 Supreme Court Cases 107**, it has been held that :

"There is nothing on evidence to suggest that he is likely to repeat similar crimes in future – On the other hand, given a chance he may reform over a period of years..... The offence under Sec.302, with further directions that life imprisonment shall extend to the full life of appellant, but subject to any remission or commutation at the instance of Government for good and sufficient reasons – Penal Code, 1860, Ss.302, 364, 376, 377 and 201." seems to be proper, adequate and sufficient punishment.

[b] In the judgment reported at **G.L.R. XLVII (I) page No.114 in the matter of Mohammad Munna v. Union of India** and Others wherein, it has been held that imprisonment for life must be treated as imprisonment for the whole of the remaining period of the natural life of the convicted person subject to remission by appropriate Government.

[c] In the matter between **Sandeep v. State of Uttar Pradesh reported at (2012) 6 Supreme Court Cases 107**, it has been held that, ".....Death sentence imposed by Courts below commuted to life imprisonment with condition that main culprit would serve minimum imprisonment for 30 years – Remission not to be granted during this period – His companion too serve imprisonment for minimum of 20 years without remission – Criminal Procedure Code, 1973 – Ss. 433-A

and 432 – Penal Code, 1860 – Ss.302 and 316 r/w. S.34 – Sentence warranted – Sentence to main culprit and sentence to accessory in crime – Sentences of imprisonment of minimum non-remittable terms commensurate with heinousness of murder, imposed..... the manner in which the life of the deceased was snatched away by causing multiple injuries all over the body with all kinds of weapons, no leniency can be shown to the said appellant. While holding that the imposition of death sentence to the accused S was not warranted and while awarding life imprisonment, it is held that the appellant – accused must serve a minimum of 30 years in jail without remissions before consideration of his case for premature release. His companion will also serve life sentence for a minimum period of 20 years."

[d] In the matter of **C. Muniappan & Others v. State of Tamil Nadu, etc. reported in 2010 (Suppl.) Cr.L.R. (Supreme Court) 373**, what has been observed by the Hon'ble Supreme Court at paragraphs No.72 and 73 needs to be borne in mind before opinion on the subject.

8. Opinion :

(a) This Court is conscious that no two cases can ever be similar on the facts, hence, no similar treatment can be offered for the purpose of imposing adequate and proper sentence. In light of the settled legal norms, to impose sentence, the Court has principally to keep in the mind, facts and circumstances and special features, if any, prevalent in the case to enable the Court to decide just, proper and adequate sentence as it is the basic philosophy of penology.

(b) It is most useful to reproduce the opening of an important judgement by the full bench of the Hon'ble Supreme Court in the matter of **Mohd. Khalid V/s. State of West Bengal – 2002 Law Suit (SC) 826** that, “No religion propagates terrorism or hatred. Love for all is the basic foundation on which almost all religion are founded. Unfortunately, some fanatics who have distorted views of religion spread messages of terror and hatred. They do not understand and realize what amount of damage they do to the society. Sometimes people belonging to their community or religion also become victims. As a result of this fanatic acts of some misguided people, innocent lives are lost, distrust in the minds of community replaces love and affection for others. The devastating effect of such dastardly acts is the matrix on which the present case rests.” This discussion is the foundation on which the entire case is based.

(c) In the facts of this case, what the convict accused have done on that day was based on their personal enmity, bias and hatred for the people having faith in different religion and for those who belonged to a different community.

(d) It needs to be noted that at that time, A-37 has played a role of one of the principal conspirators and a kingpin of the communal riot. India is a secular state and such offence by the elected member of the constitutional body needs to be viewed by the Courts very seriously where disharmony, hatred and enmity based on religion was created by instigation and where such commission of the crimes were abetted by A-37.

(e) Some of the accused are young, some are having health

problems and some of them have their ailing family members whose submissions normally need to be considered by justice delivery system but, while doing so, the Court has to use its discretion very carefully and keeping in mind several factors. One such factor is also applicable in case of A-1, A-2, A-10, A-18, A-22, A-25, A-41, A-44 and A-37 that they have shown no consideration for human lives. These accused have played leading role in entire massacre of Naroda Patiya. They deserve different treatment than others for their peculiar contribution in the crime, hence, as far as their request for sympathetic treatment to them is concerned, it is opined that the submission should not be accepted without deciding the principle issue as to whether the Court should impose death penalty or not?

(f) In the facts and circumstances of the case, even not imposing death penalty can also be safely termed to be grant of the prayer of sympathetic consideration, looking to their lion share in the entire massacre at Naroda Patiya.

(g) Their submission for their family responsibilities, small kids, health of their spouse, they being the only bread winner, etc. cannot be considered in absence of accessing their role based on the proved facts of the case. How it can out of the mind that the loud cries of the victims for the help and mercy if have not appealed to the heart, mind and soul of the accused, then, it itself is an important consideration. The proved fact reveals of throwing children in the flames of fire was the most shocking part where, except A-37 every accused has played his overt act as member of unlawful assembly. This fact has to be kept in judicial mind as the most vital consideration which

squarely covers the case of the eight accused except A-37 mentioned at point (e) herein above.

(h) The communal hatred displayed by communally surcharged mob on account of instigation of accused like A-37, A-18 and participation of the remaining and or on account of some vested interest who wants division of society on communal bases resulted into the massacre.

(i) In light of the above discussion, as far as the other guilty accused are concerned, this Court can certainly consider their submission on humanitarian aspect and can certainly ponder over the effect on their family members, their age, etc. since some of them were present and have participated in one or two occurrences, and not for the entire day. Moreover, they were not the leading conspirators, were the one who were instigated and abetted by the principal conspirators who would have perhaps not mustered the courage to break the law and order situation as, they have broken in absence of abetment and instigation. Even some of them were not at all conspirators but, were members of the unlawful assembly which jointly committed the crimes.

(j) Even though this can be considered as rarest of the rare case on the face of it, considering the fact of 96 murders and 125 serious hurt to attempt to murders, but while considering the fact that long time has elapsed to the communal riot of 28/02/2002 during which period they have also to face the trial, the accused have also undergone the agonies of the trial for 3 years in which, on about 400 days, this case was conducted.

Noticing the fact that the sword has been kept hanging

for ten long years on the accused who were implicated in the crime, the purpose of deterrence has already been partly served in this duration hence, death sentence should not be awarded eventhough it is held that it is rarest of rare massacre. Principally, death sentence should be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime.

(k) A fact cannot miss the site that, it is no doubt a gruesome offence and the biggest massacre of post Godhra riot case, but the interest of justice would be served if it is kept in mind that the accused had undergone agony and the hanging sword for about 10½ long years.

The object of punishment is to deter the accused and since the crime committed by the accused is more serious and grave in nature, it should be appropriately handled so as to set an example in the society.

(l) The punishment imposed should be fit to the crime committed and that it is the duty of the Court to impose proper punishment depending on the degree of criminality. Improper and insufficient punishment can seriously undermine respect for law.

(m) In paragraph No.7 herein above, from the celebrated judgments on the subject under discussion, it is clear that the principles propounded in the judgments, guide the Court that application of these principles would enable the Court to strike balance between needs to be addressed by the Court between

concepts of victimology and penology. In the humble opinion of this Court, this can be achieved by imposing life imprisonment for the whole of the natural life or for specified term in case of some of the convict persons of this case, subject to, remission by appropriate Government. As is clear in the matter of Amit v. State of Uttar Pradesh (supra) that the further direction by the Court that, “life imprisonment shall extend to the full life” would serve the purpose of imposing punishment in particular kind of cases.

Another guideline is also available from the judgment of Sandeep (supra) that the Court in the given circumstances to impose just, proper and adequate punishment can also impose life imprisonment with a condition that main culprit would serve atleast minimum imprisonment for stipulated years, during which period no remission can be granted. The proper and adequate punishment in the case is only life imprisonment with the conditions.

(n) As far as case of A-1, A-2, A-10, A-22, A-25, A-41 and A-44 are concerned, this Court strongly feels that, a sentence of life imprisonment for specified term and for A-18 for remaining period of his natural life subject to remission, would be right response to the loud cry of justice, of the victims of these ghastly crime, it would be in the interest of justice and would also be just, proper and adequate as normally the usual life imprisonment has a term of 14 years which would be grossly disproportionate and inadequate.

In the peculiar facts and circumstances of the case, a more reasonable and just punishment would be imprisonment for life with direction that A-18 shall not be released for

remaining period of his natural life, but subject to any remission or commutation at the instance of the Government for good and sufficient reasons. But, in any case, the said order for 'remaining life' should not be applied to A-37 but in case she is treated at par with the remaining accused then that would disproportionate punishment. However, remission or commutation should not be exercised by the Government atleast upto the specified term to be imposed by this Court by way of imposition of sentence, in the operative part of this order, would be proper. However, at this juncture, it is fitting to note that A-37 is a woman and was not proved to be member of unlawful assembly needs consideration which consideration can be reflected by specifying her term to be of 18 years until which remission or commutation shall not be effected by the appropriate Government.

(o) In the facts of the case, when alternative to death penalty is available, it is better to embrace the same. There are ways to address this violent crime in a more constructive way in which precious lives were lost in a barbarous attack launched by the assailants.

(p) It is true that communal mind set is unfortunate and unhappy situation. Unfortunate deep rooted religious bias is the misfortune for any democratic country.

On account of the lapse of time of ten and half years the agony of impending trial to the accused and suffering of their families, the case just falls short for death sentence but, it is undoubtedly rarest of the rare case. On account of the agonies of the accused, this Court feels some what reluctant in imposing the death sentence by holding the case to be rarest of

the rare case.

(q) As far as the accused other than the 9 accused are concerned viz. A-4, A-5, A-20, A-21, A-27, A-28, A-30, A-33, A-34, A-38, A-39, A-40, A-42, A-45, A-46, A-47, A-52, A-53, A-55, A-58, A-60 and A-62 (the 22 accused are concerned) needs to be considered differently. It is necessary at the same time to consider the age of most of the accused, the family background of the accused, the submission of they being the only breadwinners of the family, considering that by afflux of time circumstances and socio political reasons must have changed, this Court should also balance between reformative and punitive objects of the punishment as far as these more or less followers of the main accused are concerned.

(r) In case of these twenty two accused, this Court opines that the usual life sentence to them being minimum punishment for offence u/s.302 of I.P.C. would meet with ends of justice and that would also meet with the need of proprietary and adequateness of the punishment.

(s) A-18 is the one who was proved to have remained present and participated in the worst occurrence of the entire day where, highest death toll has been reported vis. the evening occurrence. A-18 was not present in the noon occurrence. But then, he is one of the principal conspirators as well as a convict accused against whom numerous commission of overt acts have been proved. Hence, he is an accused who should not be awarded similar sentence as has been awarded to the 8 accused and to A-37, the circumstance being different.

(t) In the facts of the case, to avoid duplication no separate sentence needs to be recorded under S.135(1) of the Bombay Police Act and for the offence u/s. 120-B of the I.P.C. since is covered in the main. While appreciating the settled position of law principle of criminology, penology and growing international concern for human rights, and further viewing the above factual position, the sympathy prayed for by the defence, if granted to A-18 and eight others who have been dealt separately, would term as misplaced and unwarranted sympathy when the accused have been held guilty for the offences threatening the very important and vital feature of the Constitution of India viz. secularism. The accused have hatched criminal conspiracy of a very serious nature who all were found in conscious possession of deadly and lethal weapons.

(u) In a country like ours, discrimination on the ground of religion or enmity or hatred for any religion is a taboo. Taking lives of persons just because those persons are having faith in another religion is bound to be dangerous and it strikes at the very root of the orderly secular society which the founding fathers of our Constitution dreamt of.

(v) For the 26 conspirators accused, other than A-37, no separate sentence is to be recorded in view of the fact that the sentence u/s. 149 has been recorded whereas the kingpin A-37 has been convicted for the offences r/w. S.120B of I.P.C. She needs to be sentenced accordingly.

(w) Since Sec.120-B and Sec.149 of I.P.C. are based on principle of joint liability, sentence in either has been awarded

in case of each of the accused who are held guilty of those crimes to avoid duplication.

Atleast three of the accused shown in charge EXH.65 are absconding, hence the muddamal collected by the investigating agency in this case needs to be preserved.

All the substantive sentences, except the sentences of imprisonment for life, shall run concurrently.

The accused shall be entitled for set off as per Sec.248 of the Code of Criminal Procedure.

The sentences of imprisonment for life shall run after the expiration of the concurrent sentences for imprisonment for terms.

As the case against the original accused No.26 is pending who has been arraigned in Sessions Case No.236/2009, the same has been kept pending till N.B.W. issued on him stands served.

Considering the seriousness and gravity of the occurrence, it would not be in the interest of justice and equity to impose similar sentence on all the accused when there is a clearcut difference between the degree of seriousness in the offence committed.

(x) As has been orally submitted by Learned Special P.P. under the instruction of the I.O. / representative of the I.O., this Court has been informed that the N.B.W. issued against A-26 has yet not been served. This Court is of the humble opinion that the statutory requirement under Sec.235(2) of Cr.P.C. is to

afford a fresh opportunity to the accused and that being a valuable right of A-26 to address the Court on the quantum of the sentence, it would be just, fair and proper to adjourn the Sessions Case No.236/2009 qua A-26 in which he has been arraigned as an accused to another suitable date. The case only qua him shall remain pending in the file of this Court whereas the Session Cases of all other 60 accused qua them shall stand disposed of in light of the necessary orders passed on 29/08/2012 for the conviction and passed today by this Court for the sentence to the accused held guilty. Considering all the above points and giving cumulative effects to the above points following final order is necessitated.

Further Final Operative Order :

[1] The following named and numbered accused have been held guilty by this Court on 29/08/2012 for commission of different offences.

Accused No.	Name of Accused
A-1	**Naresh Agarsinh Chhara**
A-2	**Morlibhai Naranbhai Sindhi @ Murli**
A-4	**Ganpat Chhanaji Didawala (Chhara)**
A-5	**Vikrambhai Maneklal Rathod (Chhara) @Tiniyo**
A-10	**Haresh @ Hariyo Son of Jivanlal @ Agarsing Rathod (Chhara)**
A-18	**Babubhai @ Babu Bajrangi Son of Rajabhai Patel**
A-20	**Kishan Khubchand Korani**
A-21	**Prakash Sureshbhai Rathod (Chhara)**
A-22	**Suresh @ Richard @ Suresh Langado Son of Kantibhai Didawala (Chhara)**

A-25	**Premchand @ Tiwari Conductor Son of Yagnanarayan Tiwari**
A-26	**Suresh @ Sehjad Dalubhai Netlekar (Marathi Chharo)**
A-27	**Navab @ Kalu Bhaiyo Harisinh Rathod**
A-28	**Manubhai Keshabhai Maruda**
A-30	**Shashikant @ Tiniyo Marathi Son of Yuvraj Patil**
A-33	**Babubhai @ Babu Vanzara Son of Jethabhai Salat (Marvadi)**
A-34	**Laxmanbhai @ Lakho Son of Budhaji Thakor**
A-37	**Dr.Mayaben Surendrabhai Kodnani**
A-38	**Ashok Hundaldas Sindhi**
A-39	**Harshad @ Mungda Jilagovind Chhara Parmar**
A-40	**Mukesh @ Vakil Ratilal Rathod Son of Jaybhavani**
A-41	**Manojbhai @ Manoj Sindhi Son of Renumal Kukrani**
A-42	**Hiraji @ Hiro Marvadi @ Sonaji Son of Danaji Meghval (Marvadi)**
A-44	**Bipinbhai @ Bipin Autowala Son of Umedrai Panchal**
A-45	**Ashokbhai Uttamchand Korani (Sindhi)**
A-46	**Vijaykumar Takhubhai Parmar**
A-47	**Ramesh Keshavlal Didawala (Chhara)**
A-52	**Sachin Nagindas Modi**
A-53	**Vilas @ Viliyo Prakashbhai Sonar**
A-55	**Dinesh @ Tiniyo Govindbhai Barge (Marathi)**
A-58	**Santoshkumar Kodumal Mulchandani, known as Santosh Dudhwala**
A-60	**Pintu Dalpatbhai Jadeja (Chhara)**
A-62	**Kirpalsing Jangbahadursing Chhabda**

Note : Here onwards, the accused shall be referred only by their numbers for the sake of brevity.

[2] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.143 r/w. Sec.149 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 6 (six) months, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 7 days.

[3] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.144 r/w. Sec.149 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[4] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.147 r/w. Sec.149 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[5] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.148 r/w. Sec.149 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[6] Accused No.1, 2, 5, 10, 18, 20, 21, 22, 25, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, and 62 (in all 25 accused) are convicted of the offence u/s.295 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.295 r/w. Sec.120-B of I.P.C. (thus in all 26 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[7] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.427 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.427 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[8] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.435 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.435 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[9] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.436 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.436 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 10 (ten) years, and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) each, in default, to suffer further rigorous imprisonment for 30 days.

[10] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.440 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.440 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 5 (five) years, and shall also pay a fine of Rs.500/- (Rupees Five Hundred only) each, in default, to suffer further rigorous imprisonment for 20 days.

[11] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.153 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.153 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 1 (one) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 7 days.

[12] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30,

33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.153-A r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.153-A r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 3 (three) years, and shall also pay a fine of Rs.300/- (Rupees Three Hundred only) each, in default, to suffer further rigorous imprisonment for 20 days.

[13] Accused No.1, 2, 5, 10, 18, 20, 21, 22, 25, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, and 62 (in all 25 accused) are convicted of the offence u/s.153-A(2) r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.153-A(2) r/w. Sec.120-B of I.P.C. (thus in all 26 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 3 (three) years, and shall also pay a fine of Rs.300/- (Rupees Three Hundred only) each, in default, to suffer further rigorous imprisonment for 20 days.

[14] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.323 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.323 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 6 (six) months, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 7 days.

[15] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and

62 (in all 30 accused) are convicted of the offence u/s.324 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.324 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 1 (one) year, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[16] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.325 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.325 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 7 (seven) years, and shall also pay a fine of Rs.500/- (Rupees Five Hundred only) each, in default, to suffer further rigorous imprisonment for 20 days.

[17] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.326 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.326 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 10 (ten) years, and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) each, in default, to suffer further rigorous imprisonment for 30 days.

[18] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 28, 30, 40, 41, 44, 46, 52, 53, 55 and 60 (in all 20 accused) are convicted of the offence u/s.188 of I.P.C. wherein, each of them is

sentenced to suffer rigorous imprisonment for 6 (six) months, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 7 days.

[19] No separate sentence has been recorded for the offence committed u/s.135(1) of the B.P. Act and 120-B of the I.P.C.

[20] A-22 is convicted of the offence u/s.354 and u/s.376 of I.P.C. wherein, he is sentenced to suffer rigorous imprisonment respectively for 2 (Two) years and for 10 (ten) years and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) and Rs.500/- (Rupees Five Hundred only). In default he shall suffer rigorous imprisonment respectively for 2 (two) months and 6 (months).

[21] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence u/s.307 r/w. Sec.149 of I.P.C. and A-37 is convicted for the offence u/s.307 r/w. Sec.120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 10 (ten) years, and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) each, in default, to suffer further rigorous imprisonment for 30 days.

[22] Accused No.37 is convicted of the offence u/s.302 r/w. Sec.120-B of I.P.C. and is sentenced to suffer rigorous imprisonment to serve a minimum sentence of 18 (eighteen) years in jail without remissions before consideration of her case for premature release and shall also pay a fine of

Rs.5000/- (Rupees Five Thousand only), in default, to suffer further rigorous imprisonment for 40 days.

[23] Accused No.1, 2, 10, 22, 25, 41 and 44 are convicted of the offence u/s.302 r/w. Sec.149 of I.P.C. and are sentenced to suffer rigorous imprisonment to serve a minimum sentence of 21 (twenty one) years in jail without remissions before consideration of their case for premature release and shall also pay a fine of Rs.5000/- (Rupees Five Thousand only), in default, to suffer further rigorous imprisonment for 40 days.

[24] Accused No.18 is convicted of the offence u/s.302 r/w. Sec.149 of I.P.C. and is sentenced to suffer rigorous imprisonment for remaining period of his natural life subject to remission or commutation at the instance of the Government for sufficient reason only and shall also pay a fine of Rs.500/- (Rupees Five Hundred only), in default, to suffer further rigorous imprisonment for 15 days in case, if his case is considered for commutation or remission.

[25] Accused No.4, 5, 20, 21, 27, 28, 30, 33, 34, 38, 39, 40, 42, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 22 accused) are convicted of the offence u/s.302 r/w. Sec.149 of the Indian Penal Code wherein, each of them is sentenced to the life imprisonment (to be meant in usual terms) and shall also pay a fine of Rs.3000/- (Rupees Three Thousand only) in default, to suffer further rigorous imprisonment for 20 days.

[26] As has been discussed and held while discussing Point for Determination No.XI at Part-7 of the Judgement since PW-205 named Zarinabanu Naimuddin Shaikh was subjected to the

crime known as worst form of human right violation of the woman viz. the commission of offence of sexual violence in the light of international concern for growing menace of sexual violence against the women and since she was a victim of the offence of gang rape which gives a serious blow to her supreme honour, her self-esteem and her dignity as woman, this Court gives direction to appropriately consider the case of compensation of the PW-205 who is hereby ordered to pay compensation of Rs.5,00,000/- for the gang rape committed on her. The commission for women in Gujarat State, the Principal Secretary of the Department of Social Welfare, Sachivalaya Gandhinagar, Gujarat State and the Board formulated for the compensation of the rape victim in the State of Gujarat shall see to it that the compensation as awarded of Rs.5,00,000/- from the Gujarat State exchequer shall be paid to PW-205 at the earliest upon due verification and proper procedure to be adopted for her identity. Yadi to all the three

[27] All the substantive sentences, except the sentences for imprisonment for life, the applicable meaning of which has been given by this Court in this order with reference to each of the accused, shall run concurrently.

[28] The sentences of imprisonment for life and the applicable meaning of which has been given by this Court in this order with reference to each of the accused, shall run after the expiration of the concurrent sentences for imprisonment for the mentioned terms.

[29] The Sessions case No.236/09 is ordered to be kept pending in the original file of this Court till the N.B.W. issued

against A-26 stands executed. The matter qua A-26 has now been kept on 03/09/2012 for the execution of the N.B.W. and / or for production of action taken report by the investigating agency.

All the mentioned 7 cases for all the mentioned accused and the Sessions Case No.236/2009 for all the accused except for A-26, hereby stand disposed of in light of the further final order passed herein above.

[30] All the accused shall be entitled for set off in accordance with law.

[31] As far as A-52 is concerned, he shall be entitled for set off in accordance with law for all the substantive sentences for the mentioned terms.

[32] A-52 shall be protected against the imposition of life sentence second time on him while the first sentence is in operation, hence, he shall be entitled to his statutory right u/s.427(2) of the Cr.P.C.

[33] All the muddamaal collected by the investigating agency as case property of these cases, shall not be disposed of at this stage since, at least three of the accused are absconding.

[34] This being a common order for eight Sessions Cases, a copy of this judgment shall be kept on record of each case mentioned in the title.

[35] Certified copy of the judgment shall be provided by the Registry to each of the convicted accused of this case, free of

cost, at the earliest but, in any case within ten days from today i.e. on or before 10/09/2012 under their written receipt. On account of paucity of time and on account of the judgment being of about 2000 pages, this Court if of the opinion that supplying the soft copy today or latest by Monday evening before the completion of office hours, to each of the accused would serve the purpose of compliance of the statutory provision of supplying the copy of the judgment to each of the convict. In case of supply of the soft copy of the judgment, except during the working hours of the day, the registry shall supply the same at Central Jail, Sabarmati under written receipt of all of them.

[36] In view of the fact that about 3 accused are absconding as named in EXH.65 – Charge, the Registry is also hereby directed to keep one set of certified copies of the entire R & P except the exemption applications and the adjournment applications to use the same while the trial of the absconding accused would begin.

[37] Before parting, this Court records its appreciation for all the members of legal fraternity concerned and connected with the matter for the prosecution as well as for the defence and the Chairman and members of the SIT for their able assistance to the Court in smooth administration of justice.

[38] All those convicted accused who have been imposed sentence today, have been explained in Gujarati about the main parts of the entire order stated herein above which was read over in the open Court in English.

Dictated and pronounced in the open Court today on this 31st day of August, 2012.

(**Dr. Smt. Jyotsna Yagnik**)
Special Judge,
Court for conducting Speedy
Trial of Riot Cases, situated at
SIT Courts, Old High Court
Building, Navrangpura,
Ahmedabad.